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Brief on the law of  
garnishment

San Francisco


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BRIEF  
on the  
LAW OF GARNISHMENT  
being

A Summary of the Principles of  
Garnishment

under

THE CODES AND STATUTES OF

Alaska, Arizona, British Columbia, California,  
Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico,  
Oregon, Utah, Washington, Wyoming

*Together with*

Citations and Code Provisions

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By H. A. THORNTON, B. L., L. L. B.  
of the San Francisco Bar

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## INDEX

| SECTION  | PAGE |
|--|------|
| I — Introduction . . . . .                                   | 1    |
| II — Definition . . . . .                                    | 1    |
| III — History . . . . .                                      | 2    |
| IV — Nature of Proceeding . . . . .                          | 3    |
| 1—Statutory . . . . .  | 3    |
| 2—Requisites . . . . .                                       | 4    |
| 3—Process . . . . .  | 5    |
| 4—When a Suit . . . . .                                      | 6    |
| 5—Parties . . . . .  | 8    |
| 6—Nature of Demand between Defendant and Garnishee . . . . . | 9    |
| 7—Right of Garnishor . . . . .                               | 11   |
| 8—Liability of Garnishee . . . . .                           | 13   |
| V — Service . . . . .  | 19   |
| VI — Assignment . . . . .                                    | 25   |
| VII — Answer . . . . .                                       | 29   |
| VIII — Failure to File Sufficient Answer . . . . .           | 34   |
| IX — Judgment . . . . .                                      | 35   |
| X — Questions Pertaining to Insurance . . . . .              | 39   |

## APPENDIX

|                              |     |
|------------------------------|-----|
| Statutory Provisions:        |     |
| 1—Alaska . . . . .           | 42  |
| 2—Arizona . . . . .          | 45  |
| 3—British Columbia . . . . . | 49  |
| 4—California . . . . .       | 52  |
| 5—Colorado . . . . .         | 55  |
| 6—Hawaii . . . . .           | 62  |
| 7—Idaho . . . . .            | 65  |
| 8—Montana . . . . .          | 70  |
| 9—Nevada . . . . .           | 80  |
| 10—Oregon . . . . .          | 85  |
| 11—Utah . . . . .            | 88  |
| 12—Washington . . . . .      | 95  |
| 13—Wyoming . . . . .         | 108 |

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# GARNISHMENT

By H. A. Thornton, B. L., L. L. B.

## A Paper Read at the Thirty-Eighth Annual Meeting of the Fire Underwriters' Association of the Pacific

I. INTRODUCTION.—The intention of the writer in presenting this paper to you is to take up the subject of garnishment from the point of view of the garnishee rather than from the standpoint of the garnisher. There will be no attempt made to go into the steps necessary to procure the proper writs, except insofar as the failure to follow those steps will affect the garnishee. The statutory provisions of the various States and Territories have been appended hereto for reference and the decisions of the highest tribunals in each State are cited to show what the garnishee must do and what he must refrain from doing in order to protect himself.

II. DEFINITION.—It might be well at this time to point out the difference between attachment and garnishment. It is the common usage to refer to either of these proceedings as 'attachment,' and even in the statutes and in the decisions of the courts there is a confusing interchanging of the terms. But it is well to remember that there is a great fundamental difference between a garnishment and an attachment. An attachment has been defined as "an anticipated execution to take and hold property, subject to a judgment in an action." It is, strictly speaking, a legal process, whereby the property of the debtor is taken into the custody of the law for the protection of the creditor pending the determination of the rights of the parties. Attachment, then, involves only the rights of the debtor and creditor. Garnishment, on the other hand, goes much farther, and reaches moneys, credits, or other assets of the debtor in the hands of third parties. It is really a warning or notice to the third party that he must hold anything which he may have, belonging or owing to the debtor. These effects of the debtor are not taken into the custody of the law by the process of garnishment, but are left in the hands of the third party as a disinterested trustee or stakeholder.

"Garnishment is the admonition judicially given to the attachment defendant's debtor or holder of property, warning him against payment or restoration to defendant and bidding him hold the property or credit subject to the order of court. It is the process by which the garnishee is brought into court, and also that by which the defendant's credit or property is attached in the garnishee's hands. Its service is constructive seizure by notice."

*Eagleson v. Rubin* (Idaho), 100 Pac. 765.

"The difference between an attachment of personal property and a garnishment is very great. In the former the property attached is actually taken into the possession of the officer holding the writ, and is under his custody and control, while in garnishment proceedings the property is left in the hands of the garnishee."

*Santa Fe Pac. R. Co. v. Bossut* (New Mexico), 62. Pac. 977.

III. HISTORY.—Garnishment did not exist under the common law. In London, however, a custom grew up which finally took a form similar to garnishment as we now know it. Prior to that time it was customary to throw a man in jail for debt. The first step away from that barbarous custom was to attach or seize the man's property, instead of his person, and hold it liable for his debts. It remained for the merchants of London to go a step farther and evolve a process whereby moneys due or owing to a debtor from third parties might be subjected to the payment of his debts. This custom differed greatly from the common law form of attachment, for at common law it was necessary to obtain personal service on the defendant and take possession of his property, while under the London custom it was not only not necessary to notify the defendant, but Lord Mansfield declared that the very essence of the custom is that the defendant shall not have notice. Under the custom, if the creditor instituted proceedings against his debtor and could find no effects, he appeared before the recorder and stated that he believed that certain persons in the city were indebted to his debtor. These parties were warned to come in and state whether or not they were so indebted. If it appeared that they were indebted, they were ordered to pay the money over to the plaintiff, but the debtor had a year and one day in which to appear and prove that he was not indebted to the plaintiff. This custom was very ancient and was expressly recognized and granted in some of the Royal Charters and Acts of Parliament.

IV. NATURE OF PROCEEDINGS 1.—STATUTORY.—Although the process of garnishment was derived from the custom of London, it has no existence as a common law remedy in the absence of statutory enactment. It is purely a creature of statute, in derogation of the common law. As it affects rights which would not otherwise be reached and searches out private and sometimes confidential relations between the defendant and third parties, the courts look rather askance upon this somewhat anomalous proceeding, and require that the provisions of the various statutes by which it was created be strictly pursued. They will not enlarge the letter of the law, and will not do anything by implication. The party seeking to enforce this remedy must clearly show his right thereto, and, in case of any dispute, must produce a preponderance of evidence.

Attachment is a summary remedy, and a plaintiff must clearly come within its provisions to invoke its powers.

*Adenatein v. Banas* (Ariz.), 12 Pac. 614.

"The proceedings by attachment are statutory and special and must be strictly pursued."

*Finch v. Finch* (Cal.), 107. Pac. 594;

*Griswold v. Sharpe*, 2 Cal. 17;

*Roberts v. Landecker*, 9 Cal. 262;

*Gow v. Marshall*, 90 Cal. 567;

*Rudolph v. Saunders*, 111 Cal. 233;

*Ayres v. Burr*, 132 Cal. 125;

*Clyne v. Easton, Eldridge & Co.*, 148 Cal. 287.

"An attachment being merely a creature of statute, its existence and operation in any case can continue no longer than the statute provides it may."

*Loveland v. Alvord Min. Co.*, 76 Cal. 562;

*Hamilton v. Bell*, 123 Cal. 93.

The remedy by attachment is purely statutory. It has no existence without the statute. It has an individuality entirely foreign to the common law, and, being in derogation of common right, must be strictly construed.

*Great West Min. Co. v. Woodmas of Alston* (Colo.), 20 Pac. 771.

Garnishment is a strictly statutory remedy, and it can not be extended by construction to cases which are not within both its letter and spirit. It is true that the garnishment statutes of Colorado specifically require that they should be liberally construed, so as to promote their objects. This applies, however, only to the enforcement of the remedy after jurisdiction has attached. It does not permit courts to enlarge or extend

by implication the scope of the statutes, so as to bring within their jurisdiction any cases except those to which the statutes manifestly and clearly apply. As to this, the rule of strict construction prevails, the statutes being in derogation of the common law.

Troy Laundry Co. v. Denver (Colo.), 53 Pac. 256;

Iron Co. v. Blair (Colo.), 39 Pac. 897;

Creditor must follow the statutory course.

Henkel v. Bimetallic Bank (Colo.), 58 Pac. 336.

The request to issue this peculiar statutory process must be made in the method indicated in the act itself.

Frag v. Adams (Hawaii), 5 Haw. 664;

Hackfeld v. Kavanagh (Hawaii), 6 Haw. 659;

Hayashi v. Iwata (Hawaii), 14 Haw. 627.

The right of attachment is purely of statutory regulation, and, where the statute provides the procedure in such cases, the plaintiff is required to pursue such course in order to sustain his action against the garnishee.

Eagleson v. Rubin (Idaho), 100 Pac. 765.

The statute is in derogation of the common law, and therefore it is to be strictly construed, and its provisions can not be extended by construction.

Perea v. Colo. Nat. Bk. (New Mexico), 27 Pac. 322.

The remedy by attachment and garnishment is purely statutory, and to make them available to a party, the substantial requirements of the statute must be complied with. The court has no power to enlarge or extend them beyond the letter of the statute.

Caldwell v. Banking and Trust Co. (Ore.), 95 Pac. 1;

Case v. Noyes (Ore.), 19 Pac. 105; (affirmed), 21 Pac. 46;

Graf v. Wilson (Ore.), 125 Pac. 1005.

The process of attachment is a specific statutory remedy, and, in resorting to it, the terms of the law conferring it must be strictly pursued.

Bowers v. London Bank (Utah), 4 Pac. 225.

IV. 2. REQUISITES.—Before the plaintiff can hold the garnishee liable, the following essential features must appear:

1. The court must have jurisdiction;
2. There must be a debt owing from the garnishee to the defendant; or the garnishee must have property of the defendant debtor in his hands;
3. There must be a valid judgment against the defendant debtor in favor of the plaintiff.

IV. 3. PROCESS.—There will be no attempt made to discuss at this time the process issued in garnishment or the steps necessary to obtain the same. These matters are peculiar to each State and depend entirely upon the statutes of the State. It is necessary to follow the provisions of the law in order that the process may be valid and binding on the garnishee; and it is the duty of the garnishee to see that the various provisions have been complied with. Should it appear that the garnishee has paid out money under a writ which is invalid, he will not be protected. In order to save himself and to avoid double payment, the garnishee should examine the proceedings and see that the statutory provisions have been followed. This is especially true where service upon the defendant has been obtained by publication.

Where the statute provides that the writ may be issued "at the time of issuing the summons or at any time afterwards" and it is, in fact, issued before the summons, the garnishment is void, and the garnishee would not be protected.

Low v. Henry, 9 Cal. 538.

Where the statute provides that an affidavit be filed by the plaintiff setting forth the facts necessary to the issuance of the writ, the writ must state what is required to be stated, and these facts must be *truly* stated in the *affidavit*; and if not stated in the affidavit, the garnishment or attachment should be dissolved, even though the requisite facts, omitted in the affidavit, are alleged in the complaint.

Fisk v. French, 114 Cal. 401;

Tibbet v. Tom Sue, 122 Cal. 206.

Where an undertaking or bond is required and it is defective, the garnishment must be dissolved.

Tibbet v. Tom Sue, 122 Cal. 206;

Kern Valley Bank v. Koehn, 137 Cal. 502;

Maze v. Langford, 16 Cal. App. 745.

Garnishee is bound to take advantage of all jurisdictional defects, otherwise a judgment against him is no defense.

Tabor v. Bank of Leadville (Colo.), 83 Pac. 1060.

Where there was no seal of the court on the summons, the service was defective and could not bind the garnishee.

Hayashi v. Iwata, 14 Haw. 627.

Defective bond.

Vollmer v. Spencer, 5 Idaho 563.

Garnishment is void where summons has been issued without clerk's signature.

Shannon v. Huat, 20 Mont. 557.

"Garnishment rests wholly upon judicial process and depends upon the due pursuit of the steps prescribed by law for its prosecution." "It is in the nature of a proceeding in rem, since its aim is to invest the plaintiff with the right and power to appropriate, to the satisfaction of his claim against the defendant, property of the defendant in the garnishee's hands, or a debt due from the garnishee to the defendant." (Drake, Sec. 451, 2.) "The nature of the proceeding is such that a party claiming to have acquired property rights by means of it must, in order to maintain them, show a strict compliance with all its requirements."

Batchellor v. Richardson (Ore.), 21 Pac. 392.

IV. 4. WHEN A SUIT.—Garnishment is generally considered a strictly legal, not an equitable, process issuing out of a court of competent jurisdiction, and affecting property, effects, credits, debts, or other assets of the defendant in the hands of third parties. By the statutes of some States it is made a separate and distinct action from that brought by the creditor to enforce the liability of the debtor, but in the absence of such statutory provision it is considered as a special auxiliary remedy given to the creditor by statute in order that he may more effectually reach property of the defendant debtor and hold it to secure any judgment that may be rendered. It is ancillary to the action between the plaintiff and defendant and reaches debts owing or credits belonging to the defendant which could not otherwise be held to satisfy defendant's debts.

Where, however, the garnishment is issued after judgment, or where the plaintiff brings suit against the garnishee to enforce that judgment, the proceeding is a separate suit, although it is dependent upon the main action, in that the garnishment will be void in case the court had no jurisdiction, or if for any reason the judgment is reversed. Where the garnishee, having property or effects of the defendant in his possession or under his control, disposes of or appropriates the same, or where, being indebted, he denies the indebtedness in his answer, the plaintiff is given the right to bring a separate suit against the garnishee. The garnishee then becomes the defendant and the burden is on the plaintiff to prove that he was so indebted, or that he had property or effects of the debtor in his hands. This is not, strictly speaking, a garnishment proceeding, but is a right of action given to the creditor because of the failure of the garnishee to observe the writ or warning served upon him.

Plaintiff has the right, after prosecuting his supplementary proceedings to the point of securing from the garnishee a denial of indebtedness to the judgment debtor, to bring his action against the garnishee without an order permitting him to do so.

Phillips v. Price, 153 Cal. 146;

Nordstrom v. Corona City Water Co., 155 Cal. 206.

After execution unsatisfied against the judgment debtor, the judgment creditor may bring an action at law against a garnishee upon whom notice was served under an attachment issued in the action before judgment; and it is not necessary before bringing such action that the garnishee should be required to appear and answer, or that an order should be obtained authorizing the action against the garnishee; and no equitable circumstances need be shown to justify the suit.

Carter v. Los Angeles Bank, 116 Cal. 370;

Roberts v. Landecker, 9 Cal. 262.

#### FOR DIFFERENCE BETWEEN

The proceedings provided for in 717 do not imply notice of garnishment whatever. It is a special proceeding, which can only be inaugurated after execution has been issued and returned unsatisfied in whole or in part. It may be commenced by affidavit or other proof showing that any person has property of the judgment debtor. No showing is required to the effect that a notice of garnishment has been served upon such person. In section 715 it is provided that, where it is sought to subject such property to the levy of the execution, the same proceedings may be had as those provided after the return of the execution. This expressly refers to 717 et seq. This section also fails to provide, as in 544, for a direct liability to the plaintiff, as in the attachment suit.

Herrlich v. Kauffman, 99 Cal. 271.

A garnishment proceeding is a proceeding at law—a suit.

Metzler v. James (Colo.), 19 Pac. 885;

Burton v. Snyder (Colo.), 40 Pac. 451.

Garnishment is not a new suit but an incident or auxiliary of the judgment, a means of satisfying the same by reaching the defendant's debtors.

Perea v. Colo. Nat. Bank (New Mexico), 27 Pac. 322.

While the garnishment proceeding is ancillary to the original suit and is a remedy in aid of the execution, issued in the judgment in that suit, yet it is separate, distinct action in rem and can not be considered part of the original action. It raises separate and distinct issues from



the main action and involves different parties, and is appealable in the same manner as other causes of action of a like nature.

Western Homestead Co. v. First Nat. Bk. (N. Mex.) 47 Pac. 721.

The suit by the garnisher against the garnishee is a separate action from, although auxiliary to, the original action.

Keene v. Smith (Ore.), 75 Pac. 1065.

It is strictly a proceeding at law and the pleadings are framed and the issues tried as in an ordinary action at law.

Caldwell Banking & Trust Co. (Ore.), 95 Pac. 1;

Case v. Noyes (Ore.), 19 Pac. 105 21-46.

Garnishment proceedings are not independent of but merely in aid of an action begun at or before the garnishment proceedings were instituted.

Bristol v. Brent (Utah), 99 Pac. 1000.

IV. 5. PARTIES.—When garnishment is levied at the time of issuing summons, and before judgment, the garnishee is not a party to the suit, in that a judgment can not be rendered against him in the original action, nor can he appear or be heard as to the form and character of the judgment. He must, however, be served with the process and notice provided for in the statute, and the plaintiff must prove his case against the defendant and show an indebtedness from the garnishee to the defendant, or that the garnishee had property or effects of the defendant in his possession. Where the garnishee has secured a judgment against the debtor and the garnishee is in default, or where the writ is issued after judgment, the proceeding is strictly an action against the garnishee, and the defendant becomes a stranger to the action. Where the garnishment proceeding is considered a separate suit, the garnishee is of course a party, as the garnishment proceeding is directed against him.

Garnishment involves different parties from those in the main action.

Western Homestead Co. v. First Nat. Bk. (N. M.), 47 Pac. 721.

The garnishee is not a party to the original action in the sense that a judgment can be rendered against him therein.

Adamson v. Mariner (Ore.), 67 Pac. 300.

Nor can he appear and be heard as to the form and character of the judgment.

Adamson v. Frazier (Ore.), 66 Pac. 810.

IV. 6. NATURE OF DEMAND BETWEEN DEFENDANT AND GARNISHEE.—In order that garnishment will lie, it is necessary that the defendant have a claim against the garnishee which would support an action at law. The garnishee must have property of the defendant in his possession or under his control or must be indebted to him in a sum certain, due or to become due absolutely. A contingent liability is not sufficient to support garnishment, nor is an equitable claim of the defendant against a garnishee sufficient. The general rule is that the debt must be one incurred under a contract express or implied. Damages for a tort are not a subject of garnishment. It is not necessary that the debt be due at the time of the commencement of the action, if it is of such a nature that it will not be defeated by some future condition, and if it be for a sum certain. A judgment, however, is a debt and will support a garnishment, even though that judgment be recovered in an action on a tort liability, and it is not necessary that this judgment be that of the court in which the garnishment suit is pending.

"An attachable debt must be a perfected debt and payable absolutely some time." Where the claim of the debtor against the garnishee depends on a condition not yet performed, there is no debt, and a garnishment is not effective.

Gray v. Heffer, V. B. C. 56.

"To attach tangible property, or garnishee credit, it is essential that the property or credit exist." If the garnishee owed nothing when a copy of the writ was served, the plaintiff secured no lien upon any sum which might subsequently become due.

Early v. Redwood City, 57 Cal. 193.

"The word 'debt' as used in the law of garnishment includes only legal debts—causes of action upon which the defendant in the attachment under the common law practice, can maintain an action of debt or *indebitatus assumpsit*—and not mere equitable claims."

Redondo Beach Co. v. Calif., etc. Co., 101 Cal. 322.

The liability of the garnishee must be made affirmatively to appear in order to justify a judgment against him. (If it does not appear from the answer of the garnishee, the burden is on the garnisher.)

Union Pac. Ry. v. Gibson (Colo.), 25 Pac. 300;

Denver T. & Ft. W. R. v. Smeeton (Colo.), 29 Pac. 815.

A debt for which a judgment might be rendered against a garnishee must be one for which the defendant might maintain an action against him in debt or *indebitatus assumpsit*.

Troy Laundry Co. v. Denver (Colo.), 53 Pac. 256.

It is necessary for the plaintiff to obtain a valid judgment against the principal defendant in order to charge the garnishee.

Taber v. Bank of Leadville (Colo.), 83 Pac. 1060;

Everett v. Conn. Mut. L. (Colo.), 36 Pac. 616;

Hunkel v. Bimetallic Bank (Colo.), 58 Pac. 336.

It is well settled that a debt subject to a contingency, and not due or to become due by the mere lapse of time is not subject to garnishment.

Souza v. Smith, 11 Haw. 202.

The issuance of an execution is not a condition precedent to the making of an order, under R. L. 2117, for the examination of a judgment debtor. (Only requisite is that applicant be a creditor who has obtained a judgment in any court.)

Haw. News Co. v. McBride, 19 Haw. 625.

Garnishment will not lie in an action for unliquidated damages. There must be a "debt," not a contingent or speculative liability. Must first be reduced to a judgment.

Henriques v. Vinhaca, 20 Haw. 702.

The mere fact that a debt is not yet due will not defeat the attachment, if there is a certain obligation to be met in the future—but where it is conditional and contingent, it can not be attached.

Cowell v. May (Mont.), 66 Pac. 843.

There must be an existing debt at the time of service, and not a mere conditional or contingent liability.

Delenty v. R. M. Bell Tel. Co. (Mont.), 108 Pac. 921;

Cowell v. May, (Supra).

Debts not actually due or owing, but depending on a contingency, can not be reached by garnishment.

Reinhart v. Harlesty (Nev.), 30 Pac. 694.

The person garnished must be indebted to the defendant before process can issue. The claim must be a *legal*—not an equitable demand, absolutely and unconditionally owing and payable at the present or some time, i. e., it must be enforceable in an action at law, and its payment must not be dependent upon the existence or performance of contractual conditions. The debt must be in existence at the time of service—although the debt may not be due, if absolutely payable in the future.

Garland v. Sparling (New Mex.), 30 Pac. 925.

In a proceeding under this section (2 Code 524) the rendition of a valid judgment against the principal debtor was an essential to the main-

tenance of the action. It was a jurisdictional fact, which could not be waived by the garnishee.

Timm v. Stegman (Wash.), 22 Pac. 1004.

IV. 7. RIGHT OF GARNISHOR.—Garnishment is sometimes considered as an involuntary assignment to the plaintiff of all the defendant's rights against the garnishee, or to the money or property in his hands. The plaintiff is merely substituted to the rights of his own debtor and can not acquire any greater rights or enforce any greater liability against the garnishee than could the defendant, except in the case of fraud. It sometimes happens that the defendant is barred from enforcing any claim which he might have against the garnishee by his own fraudulent conduct, but this would not bar his creditors who might have been injured by that fraud. For instance, defendant A. makes a fraudulent transfer of his property to defeat his creditors. While he might be stopped from setting up his own fraud to defeat that assignment, his creditors would be allowed to plead it.

It is not only necessary that the defendant have a claim against the garnishee which he could enforce in an action at law, but it is also necessary that the plaintiff have a claim against the defendant, and that he prove the same and reduce it to judgment.

A plaintiff who has sued out an attachment and given the necessary notice to a garnishee, that the property in his hands is attached and subsequently the garnishee fraudulently disposes of the property, has a right to waive his lien on the property, and bring suit for the value of the property against the garnishee.

Roberts v. Landecker, 9 Cal. 262.

Garnishment may be regarded as an involuntary assignment of the debt, or the creation of a lien thereon, and it dates from the levy.

Nordstrom v. Corona City Water Co., 155 Cal. 213.

So far as the relations of the plaintiff's to the debtors are concerned, a judgment against the garnishee operates as a statutory assignment of the debt in the hands of the garnishee, and the plaintiffs become clothed with all the debtor's rights as to the debt in question.

Montgomery v. Whitehead (Colo.), 90 Pac. 509;

Ins. Co. v. Tabor, 16 Colo. 531;

Sevier v. Nevada, 14 Colo. 54.

The rights of the garnishor are no greater than those of the creditor.

Hallowell v. Greenleaf (Colo.), 32 Pac. 79;

Jones v. Langhorne (Colo.), 34 Pac. 997.

The rights of the garnishor are no greater than those of the defendant, except in case of fraud when he may reach the effects so fraudulently transferred, by garnishment.

Van Ness v. McLeod (Idaho), 31 Pac. 798;

Cunningham v. Bank (Idaho), 88 Pac. 995.

The garnishor stands in the shoes of the debtor and can assert only the rights of the latter, and all defenses, either legal or equitable, of the garnishee or third parties, may be interposed against the garnishor that might have been set up against the debtor.

Field v. Sammis (N. Mex.), 73 Pac. 617;

Perea v. Colo. Nat. Bank (N. Mex.), 27 Pac. 322.

Notice of garnishment served upon a debtor, while giving a right of action against him for money owing to the defendant in the garnishment proceedings, does not constitute a lien upon money with which he may subsequently pay his debts, so as to enable the garnishor to follow the money into the hands of third persons to whom it has been paid.

Hulley v. Chedie (22 Nev. 127), 36 Pac. 783.

A garnishment is not retroacting, nor does it give any greater rights against the garnishee than the defendant himself possessed, except in cases of fraud.

Meier v. Hess (Ore.), 32 Pac. 755;

O. R. & N. v. Gates (Ore.), 10 Ore. 514;

Baker v. Eglin (Ore.), 8 Pac. 280;

Phipps v. Bieley (Ore.), 16 Pac. 185;

Case v. Noyes (Ore.), 19 Pac. 104.

General rule is that creditor has no greater rights against the garnishee than the defendant had before the writ was issued.

Graf v. Wilson (Ore.), 125 Pac. 1005.

He succeeds to the rights of his debtor.

Caldwell Bank & Trust Co. v. Porter (Ore.), 95 Pac. 1.

By service upon the garnishee of a copy of the writ of attachment and notice as provided by law, the plaintiff obtains the right, if the certificate is unsatisfactory, to maintain an action against him upon a liability existing in favor of the defendant in the original action.

Keene v. Smith (Ore.), 75 Pac. 1065;

Smith v. Conrad (Ore.), 31 Pac. 398;

Case v. Noyes (Ore.), 19 Pac. 105.

The garnishor has to make out a case against the garnishee (when permitted to do so) unless the indebtedness to the defendant be admitted by the garnishee.

Keene v. Smith (Ore.), 75 Pac. 1065;

Baker v. Eglin (Ore.), 11 Ore. 333;

O. R. & N. v. Gates (Ore.), 10 Ore. 514.

If an attaching creditor has knowledge of latent equities, or sufficient notice to put him upon inquiry, his attachment is subject to such equities.

Osgood v. Osgood (Ore.), 56 Pac. 1017;

Rhodes v. McGarry (Ore.), 23 Pac. 971;

Meier v. Hess (Ore.), 32 Pac. 755.

It is not a decisive test, though a usual one, that the principal defendant be able to maintain an action or suit against the garnishee, in order for garnishment to lie.

Graf v. Wilson (Ore.), 125 Pac. 1005.

(Not necessary in this case. The debtor had a claim against the county for his wages as a laborer. Before he could sue, it would be necessary for him to present his claim to the auditor. Held, that this claim could be reached by garnishment, although it had not been presented, as the debtor might otherwise defeat creditor's right by not presenting claim.)

The rights of the garnishor are no greater than those of his debtor.

Ford v. Aetna (Wash.), 126 Pac. 69.

(Case of indemnity insurance. There was a provision in the policy that no right of action accrued until actual loss was sustained and paid in money. Held—this was indemnity only against loss actually sustained and not against liability. Third party could not garnish, as there was no debt until the principal debtor has suffered loss.)

Bellingham v. Briscois (Wash.), 44 Pac. 153;

McAlmond v. Bevington (Wash.), 63 Pac. 251;

Mervin v. Fowler (Wash.), 56 Pac. 374.

Garnishment is, in effect, only an assignment of the claim from the debtor to the creditor. The creditor gains no more or greater rights than the debtor had, and the garnishee loses no rights. And the payment of the money can be enforced only by ordinary action.

Schlorselt v. Boyden (Wyo.), 64 Pac. 225.

IV. 8. LIABILITY OF GARNISHEE.—The position of the garnishee has been likened to that of a trustee or stakeholder. He is warned by the service of the writ and notice to hold all property of the defendant

which may be in his hands or under his control, and to refrain from paying any debt which may be owing from him to the defendant. He must not, thereafter, favor either party to the action; but he must let the law decide to whom he shall pay the money or transfer the property in his possession. He must not dispose of the money or property to either party, or on their order, until the action has been disposed of, and then he is bound by the judgment or order of the court. Should he dispose of the property, he is liable in a suit brought by the party injured by his act. The garnishee can not be held liable for a larger amount than the sum of money or the property in his hands; and, unless he has wrongfully resisted the plaintiff or has fraudulently disposed of the property, he is not liable for costs. Where he has conducted himself as required by the statute, he is generally allowed any costs necessarily incurred, and in some States, he is allowed fees and mileage as a witness.

A garnishee can only be required to answer as to his liability to the debtor defendant at the time of service of the garnishment. The garnishment is an attachment of existing debts and whatever does not exist can not be attached.

*Norris v. Burgoyne*, 4 Cal. 409.

Upon proceedings supplementary to execution, where it appears that there are other persons claiming liens on money in the possession of the garnishee, the court can not properly order that the garnishee shall pay money in its possession to the plaintiff, but is authorized only to make an order to the effect that the plaintiff may bring an action against the garnishee as provided by 720 C. C. P., to which action other persons claiming liens upon the money by prior attachments might be made or become parties, to the end that all adverse claims might be adjudged and conclusively settled in such action, so that the garnishee would thereby be protected against them.

*Deering v. Richardson Kimball Co.*, 109 Cal. 73.

Under the provisions of 714 C. C. P., a debtor of a judgment debtor may be fully examined as to property, credits, money or other assets in his possession or under his control. Witnesses may be examined, and the judge may order any property of a judgment debtor to be applied towards the satisfaction of the judgment. If it appears that the person alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person for the recov-

ery of such interest or debt. (In this case plaintiff did not comply with the section—defendant had not been examined—no order had been made as to the application of assets or authorizing the suit. Therefore, it is clear that the proceeding contemplated by the code has been entirely ignored—and plaintiff is suing one whom he does not even claim is indebted to him.)

*Matteson, etc., Mfg. Co. v. Conley*, 144 Cal. 483.

(*Cf. Herrlich v. Kauffman*, 99 Cal. 271, for distinction between liability under attachment and execution.)

An order in proceedings supplementary to execution directing a garnishee to apply a sum due to the judgment debtor to be paid to the judgment creditor is in effect a judgment, which, if not appealed from, is *res adjudicata*, and conclusive in any other action between the garnishee and the judgment creditors.

*Societa di Mutuo Socorso v. Mantel*, 1 Cal. App. 107.

The garnishee is not answerable for effects of defendant coming into his hands, or indebtedness accruing from him to defendant after the garnishment and before answer.

*Bragdon v. Brandt*, (Colo.), 64 Pac. 248.

The liability of the garnishee is not changed by the fact that a writ has been issued and served upon him, except that the rights of his creditor, or the person whose property he holds, have been transferred to the plaintiff in the action. He has the same right to set up any defense to the action, or any counter-claim or set-off, that he would have were an action brought against him by the defendant. It seems that the only case in which this rule would not apply would be where there has been a fraudulent transaction to defeat creditors. Where the garnishee has paid the debt or delivered the property in his possession under a valid judgment, or where, if the statute so provides, he has turned over the money or property to the proper officer, he will be protected against any subsequent proceedings on the part of his creditor. The mere fact that a suit in garnishment is pending is no defense to an action by his creditor, nor is the fact that a garnishment proceeding is pending in another court a defense. The garnishee should set up in his answer, however, the pendency of the other action, and the court will grant either a stay of proceedings, or, in case it permits the case to go to judgment, a stay of execution, so that only property left in the garnishee's hands after satisfying any prior judgment shall be liable under a judgment rendered in the garnishment proceeding. The rule is that the garnishee should be carefully protected, and not put in any worse position than before the garnishment.

He should not be forced to pay the debt twice, unless he has been careless or negligent, or has wilfully acted contrary to the order of the court.

As a general rule, the garnishee may offset against the claim of the judgment creditor whatever demand he might be able to set off against the claim of the judgment debtor against him.

*Carter v. L. A. Nat. Bank*, 116 Cal. 370.

But the set-off which may be claimed by the garnishee must be one which existed at the time of the garnishment.

*Nordstrom v. Corona City Water Co.*, 155 Cal. 206.

If the obligation of the garnishee to the judgment debtor is not barred, the statute of limitation has no application. "As to the statute of limitations, if the garnishee is entitled to the plea as against the defendant in the attachment suit, he can plead it. The liability created by the garnishment is never barred."

*Carter v. L. A. Bank* (supra);

*Nordstrom v. Water Co.* (supra).

The garnishee may plead any defense which he has against his creditor, or that the debt of that attaching creditor has been satisfied, or that he has failed to recover judgment; or that the judgment has been reversed or barred; and any other claimant of the funds in the hands of the garnishee may intervene, and plead the latter defenses against the attaching creditor, but neither the intervenor nor the garnishee can plead the statute of limitations to the liability arising distinctly out of the garnishment.

*Carter v. Bank* (supra).

The liability of the garnishee is to be determined as of the time the summons is served.

*Fleming v. Baxter*, (Colo.) 38 Pac. 57.

In order to recover against a garnishee, it must be shown affirmatively, either by his answer or by evidence aliunde, that he has property of the defendant in his possession, of a description which will authorize his being charged, or that he is indebted to the defendant. The law will not presume him liable, nor will he be required to show facts entitling him to be discharged, until at least a prima facie case is made against him. *Id.*

Garnishee is not liable for paying debtor after quashing defective service and before service of a new writ and notice. (The service of the defective notice is not a warning that another writ will be served, and even if it were, would not be binding).

*Henkel v. Bimetallic Bank* (Colo.), 58 Pac. 336.

It is an invariable rule that under no circumstances shall a garnishee, by the operation of proceedings against him, be placed in any worse condition than he would if the defendant's claim were enforced by the defendant himself.

*Sauer v. Town of Nevadaville* (Colo.), 23 Pac. 87;

*Jones v. Langhorne* (Colo.), 34 Pac. 997;

*Marks v. Anderson* (Colo.), 26 Pac. 168;

*Hallowell v. Leafgreen* (Colo.), 32 Pac. 79;

*Bickman v. Abernathy* (Colo.) 23 Pac. 447.

The judgment against the defendant must be a lawful and valid one. If it be void, the judgment against the garnishee is also void. It is of the first importance, therefore, for the garnishee to see that the judgment against the defendant was not only by a court with jurisdiction of the subject-matter, but that jurisdiction of the defendant, or of the property or credit, was obtained in the manner pointed out in the statute. Against a judgment sought against himself, which is based on a void judgment against the defendant, he must defend to the last, and is ordinarily compelled to defend alone. When the garnishee pays a judgment against himself, which is based on a judgment against defendant, rendered without jurisdiction, he is not protected by such payment against a subsequent action brought by the principal defendant or other creditor. When there is no judgment against the defendant, or a judgment that is void for want of jurisdiction, and the court erroneously render judgment against the garnishee, it will not be binding on the defendant, who was not a party to the proceedings.

*McPhee v. Gomer* (Colo.), 41 Pac. 836.

*Mills Ann. Code No. 130*—Garnishee may retain or deduct out of the property in his hands all demands against defendant which he might have pleaded in an action by defendant.

In no case (in the absence of fraud) shall he be placed in a worse position than if the action were by his creditor.

*Tabor v. Bank of Leadville* (Colo.), 83 Pac. 1060;

*Sauer v. Nevadaville* (Colo.), 23 Pac. 87.

Under *R. L. 2115*, A and B, a garnishee is entitled to any lawful set-off accruing before final judgment.

*Shaw v. Boyd*, 19 Haw. 83.

Where defendant (creditor) brings action against garnishee, he may have the proceedings stayed until the determination of the garnishment

proceedings, by a motion based upon affidavit, showing the pendency of the other action.

*Van Ness v. McLeod* (Idaho), 31 Pac. 798.

If the liability of the garnishee is certain, and the only uncertainty which exists is as to the amount of the liability, then the debt, whatever it may be, is subject to attachment.

*Dolenty v. R. Mt. Bell Tel. Co.* (Mont.), 108 Pac. 921.

While a garnishee may plead judgment, he can not plead in a bar the pendency of garnishment proceedings against him in defence of a suit brought against him by his immediate creditor.

*Harlow v. Ormon* (N. Mex.), 6 Pac. 935.

Where a warehouseman, as garnishee, has made a certificate that he has certain grain received from the defendant, and for which negotiable receipts were issued, which are outstanding, and learns before judgment is recovered in the suit against the defendant that such receipts have been transferred, he is under no obligation to notify plaintiff, not amend his certificate; nor does such failure estop him from showing such fact when an attempt is made to hold him for the grain as garnishee.

*Adamson v. Frazier* (Ore.), 66 Pac. 810.

The liability of a garnishee indebted to the defendant is a personal liability to respond to the extent of the debt.

*Barr v. Warner* (Ore.), 63 Pac. 899.

(Where he holds property, the proceeding creates a lien upon the property, which may be followed into the hands of a purchaser with notice.—*Id.*)

The garnishee is a mere stakeholder and as such has no right to favor either party. Where he admits indebtedness to the defendant in his certificate, knowing, or having reason to believe, that the debt is really owing to a third party, entry of judgment will not protect him in a subsequent suit by the third party.

*Mullaney v. Evans* (Ore.), 54 Pac. 887.

(Sale of hay. Husband signed contract, but hay belonged to wife, and garnishee had paid her part of the purchase price.)

*Phipps v. Rieley* (Ore.), 16 Pac. 185;

*Dawson v. Maria* (Ore.), 16 Pac. 413.

Property garnished in the hands of a third party is in the custody of the law, and garnishee can not dispose of it.

*Carter v. Koshland* (Ore.), 12 Pac. 58.

As against the garnishing creditor, the garnishee holding the property of the principal debtor fraudulently is a wrong doer and his possession is not rightful.

*E. B. Millar & Co. v. Plass* (Wash.), 39 Pac. 957.

Payment by an insurance company of the amount of a judgment against it on a policy to the clerk of the court, with the direction to pay all garnishment liens existing against the fund, made without order of the court and notice to the parties as required by Code Proc. 153, 154, will not discharge the company from liability under a garnishment lien of which it had notice, if the clerk fails to pay it, though the garnishment proceedings were not indexed by the court.

*Ward v. Ward* (Springfield (Wash.)), 45 Pac. 312.

By the service of a garnishment process, the garnishee becomes liable to the plaintiff in the attachment for any debt he then owes to the defendant in that suit.

*Hudson Coal Co. v. Hauf* (Wyo.), 109 Pac. 21.

V. SERVICE.—In order that the court may acquire jurisdiction of the person of the garnishee and of any property of the defendant or of any debt owing to the defendant, it is necessary that service of process be made in the manner required by the laws of the State. Two kinds of service are necessary in garnishment proceedings:

1. Service upon the principal defendant of the necessary process in a civil action; and,

2. Service upon the garnishee of such process as the statute prescribes.

The garnishee is bound to see that there has been sufficient service upon the defendant in the main action, or he will not be protected by the payment of any judgment rendered against him. This service must have been either a personal service, or service by publication. Where service was obtained by publication, the garnishee should be particularly careful to see that all the provisions of the statute dealing with service by publication were complied with. Where the debtor is not a resident of the State, or where it is a foreign corporation which has no managing agent or other officer in the State upon whom service could be made, the only valid judgment which could be rendered would be one in the nature of a judgment in rem, against such property as may have been seized under the writ. Therefore if the property was not properly brought under the control of the court, or if the attachment or garnishment pro-

ceedings were not regular, the court would have no jurisdiction, and a judgment against the garnishee would not protect him.

Personal service upon the garnishee is almost universally required, the usual method being to leave a copy of the writ and a notice specifying the property attached with the person to be held. Garnishment or attachment exist merely by virtue of the statute of the State, and it is necessary to look to the laws of the State in order to determine just what course must be pursued in order to make a valid service. Proper service is jurisdictional, and it must be made upon the person and in the way specified in the statute.

Under the California statute "debts, credits and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts \* \* \* are attached." C. C. P. 542.

Kennedy v. Hibernia S. & L. Soc., 38 Cal. 151.

And they must be attached in that manner.

McBride v. Fallon, 65 Cal. 301;

Latham v. Blake, 77 Cal. 646.

And the provisions of the statute must be strictly followed or no rights will accrue.

Gow v. Marshall, 90 Cal. 565;

Blanc v. Paymaster Min. Co., 95 Cal. 524;

Lonkey v. Mining Co., 21 Nev. 317;

Karns v. State Bank (Nev.), 101 Pac. 566.

Judgment v. garnishee without valid service of process is void.

Rice v. Amer. Nat. Bank, 31 Pac. 1024.

Service on the bookkeeper of a corporation, in the absence of any showing that he was authorized to accept the same, is clearly defective.

Perriera v. Kamo, 18 Haw. 593.

Must be on garnishee personally.

Hackfeld v. Kavanagh, 6 Haw. 659.

"It will be seen that the statute requires that the garnishee shall be served with the writ of attachment with notice that any property, or money, etc., in his hands has been attached, and with interrogatories, the answer to which is required."

"The right of attachment is purely of statutory regulation, and, where the statute provides the procedure in such cases, the plaintiff is

required to pursue such course in order to sustain his action against the garnishee."

Eagleson v. Rubin (Idaho), 100 Pac. 765.

Service must be upon the garnishee personally, and not upon his attorney.

Carter v. Koshland (Ore.), 8 Pac. 556.

The delivery to a garnishee of a copy of the writ of attachment, together with a notice to the effect that the officer thereby "attached all debts, property, money, rights, dues and credits of every nature in his hands or under his control" is a valid garnishment, and sufficiently specifies the property attached.

Barr v. Warner (Ore.), 62 Pac. 899;

Batchellor v. Richardson (Ore.), 21 Pac. 392.

Service upon the garnishee may be had upon the garnishee wherever the debt might be enforced against the defendant could be served.

Bristol v. Brent (Utah), 110 Pac. 357.

"Compiled Laws 1907, Sec. 3092, provides that in garnishment before judgment or in aid of an attachment (the proceedings upon a writ issued after judgment being identical) a writ of garnishment must issue, following a prescribed form, which must be directed to the one intended to be made garnishee. \* \* \* 3093 provides that the writ must be served as a summons is required to be served. \* \* \* 3094 provides that, upon the return of the officer showing due service, the court has jurisdiction to proceed against the garnishee and the funds in his hands. \* \* \* 3112 relates to garnishment after judgment, and provides that, where an execution remains in the hands of the officer unsatisfied, a writ of garnishment may issue and the property of the judgment debtor may be reached by serving the writ on the person having it in his possession.

Held—that to confer jurisdiction upon the court, service of the writ of garnishment required by statute is necessary, and where only a copy of an execution was served upon a person, with a notice that property in his hands belonging to the execution debtor had been attached, and that it should not be transferred to anybody, except the serving officer, with a request to furnish a statement, the court did not obtain jurisdiction.

Cole v. Utah Sugar Co. (Utah), 89 Pac. 681.

In order to make the garnishment valid, it is absolutely necessary that the provisions of the statute be strictly followed, as they are jurisdic-

tional, and therefore essential. Where the court had no jurisdiction, the defendant can raise the point at any time, and the garnishee will not be protected by an order or judgment. It is a well recognized principle of the law that the garnishee occupies the position of a stakeholder or trustee, and he is compelled to be impartial in his attitude toward the garnishor and the defendant. He may, however, by appearing, waive mere irregularities or defects in the process or service, which might render them voidable; but he can not waive any rights of the defendant or can not cure jurisdictional defects which would make the process void. It is quite generally held that by appearing the garnishee may waive personal service where there has been service on his agent or attorney, or where the process has been left at his home or office. A corporation may waive service upon the proper officer by appearing when service was made upon one not mentioned in the statute.

The garnishee can not waive the rights of the defendant.

*Henkel v. Bimetallic Bank (Colo.)*, 58 Pac. 336.

A garnishee is bound to take advantage of all jurisdictional defects, otherwise judgment against him is no defense.

*Tabor v. Bank of Leadville (Colo.)*, 83 Pac. 1060.

Although service upon the bookkeeper of a corporation, in the absence of any showing that he was authorized to accept the same, is clearly defective, it is waived by appearance. General appearance by garnishee is waiver of any defective service.

*Ferriera v. Kamo*, 18 Haw. 593.

Where process had been issued and served upon the garnishee and he had made answer, and the court ordered examination under oath, service of the order upon the attorney is not sufficient to confer upon the court jurisdiction to enter judgment, unless the parties waive the service by appearing.

*Carter v. Kashland (Ore.)*, 8 Pac. 556.

The allegations required by Sec. 164, Hill's Code, which provides that before a garnishee shall be required to appear, plaintiff may serve on him written allegations and interrogatories touching any of the property liable to attachment as property of the defendant, are in the nature of a complaint, and where they are not served, no valid judgment can be rendered against the garnishee, although he waive service. (Held—the court would have no jurisdiction of the subject matter.)

*Smith v. Conrad (Ore.)*, 31 Pac. 398.

Proceedings subsequent to the garnishment are personal to the garnishee and may be waived by voluntary appearance. But a garnishee stands in the position of a stakeholder, and therefore can not waive service of the process by which the property in his hands, or the debt due from him to the principal debtor is garnished.

*Altona v. Dabney (Ore.)*, 62 Pac. 521.

A garnishee may waive many irregularities in the notice of garnishment, and by his certificate or answer in response thereto submit himself to the jurisdiction of the court, and thus become in privity with, and in effect a party to, the judgment which has been or may be rendered against his creditor; but, while a garnishee may waive jurisdiction of his person, he can not, by voluntarily appearing, waive the defendant's rights.

*Barr v. Warner (Ore.)*, 62 Pac. 899.

While mere defects in the service or in the writ of garnishment which are not jurisdictional are waived by the voluntary appearance of the garnishee, where the court obtains no jurisdiction because of failure to comply with the statute requiring service of a writ of garnishment, the garnishee by appearing can not waive the jurisdictional defect.

*Cole v. Utah Sugar Co. (Utah)*, 99 Pac. 681.

While service on an individual, as garnishee, must be personal—or, if permitted by the statute, on his agent—service on a corporation is governed entirely by statute, as a corporation is a creature of the law and must look entirely to the law for its guidance. All the functions of the corporation must be performed by its agents, and service must be made upon an agent appointed for that purpose, either by the corporation or by the law of the State. It is generally provided that service shall be made on a "managing agent" of the corporation; i. e., the president, manager, cashier, etc.

"Corporations usually have numerous 'agents' for the different departments of their business. An insurance company may have, besides the chief officers, numerous soliciting agents in various portions of the State; and, in one sense, every superintendent or conductor on a railroad is an agent of the company, and every master or clerk of a steamboat is, to a certain extent, the agent of the owner. And yet, it would scarcely be claimed that an insurance company would be bound by a garnishment served on one of its traveling agents, or a railroad by a service on a conductor, or a navigation company by a service on a master, clerk or mate of one of its



boats. We hold, therefore, that its service be made on the 'agent' of a corporation, it must be on the 'managing agent.'"

Kennedy v. Hibernia S. & L., 38 Cal. 151;

Blanc v. Paymaster Min. Co., 95 Cal. 524.

Special provisions are made by the statutes of the various States for service upon insurance companies. These statutes generally provide for the appointment by the company of agents authorized to accept service; and, in case the company fails to appoint such an agent or attorney, for service upon the insurance commissioner, the secretary of State, or some other public officer.

The notice served upon the garnishee must specify the person sought to be held as garnishee, and must also specify the property to be garnished or attached, and the name of the defendant in the principal action, i. e., the party to whom the debt is owing, or to whom the property belongs.

However, "a mistake in the name of a natural person may be corrected by amendment of a pleading; and the misnomer of a corporation in a pleading has the same legal effect as the misnomer of an individual. The misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it, what corporation is intended. (Civ. Code, sec. 357; Underhill v. Santa Barbara, etc., Co., 93 Cal. 314; Donohoe-Kelly Banking Co. v. Southern Pacific, 138 Cal. 192; People v. Sierra Buttes, etc., Min. Co., 39 Cal. 514.) The court may, in furtherance of justice allow a party to amend any pleading by correcting a mistake in the name of a party." (C. C. P., 473.)

Nisbet v. Clio Min. Co., 2 Cal. App. 441.

"The notice of garnishment was addressed to the Donohoe-Kelly Company, instead of the Donohoe-Kelly Banking Company, and it is claimed for this reason the notice is void. There is no pretense that the notice was not served on the right party, i. e., 'the person owing such debts,' (C. C. P. 542)—and the levy was made as required by law. No question is made that the corporation intended to be reached was the Donohoe-Kelly Banking Company. The point is not well taken."

Donohoe-Kelly Banking Co. v. S. P., 138 Cal. 183;

Wileox v. American Sav. Bank (Colo.), 40 Pac. 881.

A notice of garnishment under a writ describing only "moneys, credits and effects of said defendants, or either of them," as being attached does

not include any indebtedness due from the garnishee to one of the defendants, nor create any liability therefor to the attaching creditor.

Clyne v. Easton, Eldridge & Co., 148 Cal. 287.

A garnishee is unaffected by notice served upon him, wherein the middle initial of the person named is different from that of a person to whom he is indebted, unless he is shown to have actual knowledge that his debtor and the person so named are the same.

German Nat. Bank v. Nat. State Bank (Colo.), 31 Pac. 122.

A notice in garnishment proceedings to a person as "manager" without specifying of what he was manager and served upon that person individually as shown by the officer's return, stating that property in his hands belonging to the debtor had been attached, etc., was not notice to the company of which he was manager.

Cole v. Utah Sugar Co. (Utah), 99 Pac. 681.

VI. ASSIGNMENT.—Where an assignment has been made by the principal debtor to a third party, for a good or valuable consideration, before the garnishment, the writ will not reach the property assigned. The assignment divests the assignor of any title, transferring it to the assignee, so that the garnishee has no property of the principal debtor in his hands at the time of the service of the writ. The writ of garnishment is directed to any money, goods, effects, assets or property of the defendant and can not reach money or property where the title to that property has passed to a third person. The debtor has divested himself of title and can not bring an action against the garnishee, and the garnishor stands in no better position than his debtor. Negotiable instruments, debts not yet due and other choses in action may be assigned. The assignment will operate to divest the title of the defendant, even though no notice is given to the garnishee until after the garnishment. The mere lack of notice to the garnishee is not such a defect that the assignment will be invalidated. However, to be effective, notice of the assignment must be given to the garnishee before judgment in the garnishment action. This notice must be actual notice to the garnishee, so that he can set up the fact of the assignment and protect himself from a double liability for the debt. The general practice is for the garnishee to set up the fact of the assignment and take the necessary steps to make the claimant intervene. If the garnishee had notice of the assignment before the garnishment and did not set it up in his answer, he will not be protected by any payment or surrender under a judgment or order of the court. Where the garnishee had no notice of the assignment, but voluntarily paid the money or turned

the property over to the sheriff, he will not be protected, as the act is considered voluntary. Where no notice was given until after judgment, it is of no effect and can not bind the garnishee. The giving of a bill of exchange does not operate as an assignment until it has been accepted. Giving a check drawn against funds in a bank standing in the name of the drawer does not operate as an assignment of that amount, until the check has been accepted or certified by the bank. If the assignment was fraudulent, it will not defeat the garnishment—but the burden is on the plaintiff to prove that it was fraudulent. Where the assignment does not include all the effects of the debtor in the possession of the garnishee, the writ will reach any surplus which may remain.

The fact that no notice of an assignment has been given prior to garnishment is no bar. "The judgment creditor can only obtain that which the debtor can lawfully part with, having regard to the rights of others."

Gray v. Hoffer, V. B. C. 56.

A garnishment does not give the creditor precedence over assignees of a fund, when the assignment was prior to the service of the garnishment, although notice of the assignment is served after the garnishment.

Walling v. Miller, 15 Cal. 38.

If the judgment creditor assigns the judgment, and the judgment debtor without notice of the assignment, afterwards pays the same voluntarily to the sheriff by reason of the service of garnishee process upon him, the rights of the assignee are not affected, and he may still enforce the judgment. "At the time the defendants herein paid the two debts they were not indebted to Brown (the assignor). They were, in legal judgment the debtors of the assignee, to whose representatives the judgment would have survived in case of his death."

Brown v. Ayres, 33 Cal. 525.

Where assignee has notice of supplementary proceedings, and failed and refused to attend the same, he is estopped from making any claim or from denying that garnishees were entitled to the money.

Societa de Mutua Socorro v. Mantel, 1 Cal. App. 107.

The delivery of an ordinary check upon a bank for part of the fund standing therein to the credit of the drawer, does not, prior to its presentation, operate as an assignment of the fund pro tanto and a garnishment of the fund under execution as belonging to the drawer will prevail over all unrepresented and unaccepted checks previously drawn thereon.

Donohoe-Kelly Banking Co. v. S. P., 138 Cal. 183.

Property validly assigned can not be reached by garnishment, since it no longer belongs to the assignor.

Lewis v. Bd. of Comm. (Colo.), 23 Pac. 338;

Denver, T. & Ft. W. R. v. Smeeton (Colo.), 29 Pac. 815.

Where assignee had issued time check to defendant for work and labor done and is garnished, and answers before the court in the presence of the assignee and defendant, telling the facts and saying that if the check has not been assigned he is indebted, and judgment is rendered against him, it is a bar to a future action by the assignee. (The assignee had notice and should have asserted his claim.)

Drennan v. Ross (Colo.), 29 Pac. 1041.

An assignment vests in the assignee the ownership of the indebtedness, and after the notice of the assignment, the garnishee is the debtor of the assignee and not of the assignor.

Kitzinger v. Beech (Colo.), 35 Pac. 278.

Verbal assignment is good.

Hughes & Spruance (Colo.), 25 Pac. 307;

Lewis v. Bd. of Comm. (Colo.), 23 Pac. 338;

V. P. v. Gibson (Colo.), 25 Pac. 300.

Where the defendant has made a valid assignment or conveyance of the debt or property before service of summons on garnishee, the latter can not be charged on account of such debt or property.

Cunningham v. Bank (Idaho), 88 Pac. 975;

Van Ness v. McLeod (Idaho), 31 Pac. 798;

Porter v. Title C. & D. Co. (Idaho), 21 Ida. 314.

A check does not operate as an assignment of any part of the funds in a bank until it has been accepted or certified by the bank.

Kaesemeyer v. Smith, 22 Ida. 1.

Debtor assigned all its money (consisting of a deposit in a bank in another town) to creditor, each entering the transaction on its books as completed. Debtor sent bank a telegram to transfer amount on its books. Owing to a misunderstanding this was not done and the bank was garnished. Held—there had been an actual assignment and the telegram was merely a notice and not an unaccepted check.

Oppenheimer v. First Nat. Bank (Mont.), 50 Pac. 449;

Phipps v. Biele (Ore.), 16 Pac. 185.

A bona fide assignee of a chose in action has priority over a subsequent attaching creditor of the assignor whose garnishment was served upon the

debtor before notice of the assignment (though No. 150 Hill's Ann. Laws provides that from the date of the attachment until it is discharged, or the writ executed, plaintiff, as against third persons, shall be deemed a bona fide purchaser for value of the property attached).

Meier v. Hess (Ore.), 32 Pac. 755.

Notice is not necessary to complete the assignment—but the assignment will not be binding upon the debtor, if he be forced to pay the debt to a third party before notice.—Id.

Action against insurance companies as garnishees—proofs of loss made out before garnishment showing claim of third party as mortgagee, shows a good assignment.

Wheatman v. Kane (Wash.), 104 Pac. 258.

Where the assignment is conditional and is not delivered to or accepted by the creditor before garnishment, it can not affect the garnishee.

Nixon v. Joshua Hendy Machine Wks. (Wash.), 99 Pac. 11.

As to third parties, an assignment is good without notice to the debtor, but as to him, there must be notice in order to charge him with the duty of making payment to the assignee, for if, in the absence of notice, he pay the debt, he will be exonerated from paying it again to the assignee. The obligation of the garnishee to state the assignment in his answer is not dispensed with by the fact that the assignee knew of the garnishment and might have intervened. An assignment of a debt will protect the rights of the assignee from a subsequent attachment against the assignor, though no notice may have been given to the debtor before the attachment, if it be given in time to enable him to take advantage of it before judgment against him as garnishee.

Bellingham Bay Boom Co. v. Briscois (Wash.), 44 Pac. 153.

It is the duty of the garnishee to amend his answer at any time before judgment upon receipt of notice.—Id.

Where check is given for debt and accepted, original indebtedness is extinguished and the only right of action is on the check.

Larsen v. Allan Line S. S. Co. (Wash.), 88 Pac. 853.

Nor was respondent under any obligation to stop payment on the checks after the service of the writ.—Id.

(Strong case, as these checks were sent to Chicago as a deposit, just to prevent any moneys of defendant from coming into the jurisdiction of the court.)

R. drew a draft on P. in favor of the S. bank, which the T. bank had in its possession when it was garnished by a creditor of R. after the

draft was accepted by P. and before its payment. Pending collection, the S. bank permitted R. to check against the amount thereof; but it appeared that the bank had a rule that in recovering collections it acted only as an agent, and that where a draft was given it, the deposit thereof was credited with the amount thereof, and the draft was not paid, it was charged back to such depositor. Held—that the draft did not belong to the S. bank, but to R. and was therefore subject to garnishment by his creditors in the hands of the T. bank.

Wash Brick L. & Mfg. Co. v. Trader's Nat. (Wash.), 89 Pac. 157.

VII. ANSWER.—Where a party has been served with process, he must answer thereto in a legal way. The laws of the State in which the garnishment proceedings take place control and it is necessary to look to those laws to see what is required of the garnishee and what are the penalties imposed for failure to live up to their requirements. A written answer is not generally required of the garnishee, except where interrogatories have been served upon him by the creditor. The statutes provide when the answer shall be filed and what must be stated therein. Where a written answer is required, it is generally provided that the answer must be made on oath. The garnishee must be careful about filing his answer within the time allowed, in order that default shall not be entered against him. As the position of the garnishee is that of a stakeholder, he must be absolutely impartial and set forth all the facts known to him, without favoring either party. It is also necessary for his own protection that he set forth all defenses of which he might avail himself as against the defendant and any counterclaims or debts due to him from the defendant. He must also set forth all assignments or claims of third parties of which he may have knowledge, for he will not be protected by a judgment in the garnishment suit if he has knowledge of an assignment and does not allege it in his answer. He should also set forth all other garnishments or attachments or suits pending.

If the garnishee has a good counterclaim against the defendant, and fails to set it up, he will be barred from asserting it at a later date. If he knows of facts which would defeat an action on the part of the defendant, or if he knows of assignments to, or valid claims of, third parties and does not set them forth, he will not be protected by a judgment or by an order to pay the money or deliver the property which is in his hands.

If the garnishee is indebted to the defendant, but the claim has been assigned, or if there is some special defense, he should not enter a general denial of liability, but should set forth specifically the facts upon which

he intends to rely. He will not on the trial be allowed to make a special defense under a general denial.

If the defendant is before the court, the only duty of the garnishee is to see that the court has jurisdiction over the defendant and that a judgment is properly entered. He can not set forth any defenses which the defendant might avail himself. However, where the defendant is not before the court in person, the garnishee should see that the court has jurisdiction of the subject matter of the action; as otherwise a valid judgment could not be entered and the garnishee would not be protected by any judgment rendered or order made.

The answer should set forth clearly what was due or owing from the garnishee to defendant, or what property was in the garnishee's hands, at the time of the service of the writ. In the absence of statutory provisions to the contrary, garnishment will not reach debts not yet due, nor will it bind effects coming into the hands of the garnishee after the service of the writ.

The garnishee is also entitled to set up any counterclaims that he might have set up had the action been brought by the defendant himself. He may also retain enough to satisfy all demands accruing to him before the service of the process and payable at the time of judgment.

The garnishee may set forth on information or belief matters concerning which he can not give his oath, and may include in his answer statements or letters of third parties which would effect his liability, provided that he states that he believes them to be true.

The statutes generally provide either that the plaintiff file interrogatories, directed to the garnishee, when the writ is issued, or that plaintiff may file such interrogatories after answer has been made to the officer serving the writ. Where the interrogatories are filed in the first instance, the answer of the garnishee must be to those interrogatories, provided they are pertinent or relevant. The object of the procedure which provides for interrogatories after service is to obtain a full and complete statement of the relation between the garnishee and the debtor, where the garnishee has not fully answered. If the answer of the garnishee be evasive, or if he does not answer all relevant questions, he renders himself liable to default.

Some of the States also provide for an examination under oath before some designated officer or judge of the court. The answer given by the garnishee to the interrogatories or at the oral examination are considered

supplementary to the answer already given, and are considered together with it as the garnishee's answer.

Where the garnishee has been misinformed, or was honestly mistaken, in the statements set forth in the answer, it is generally left within the sound discretion of the court to allow him to amend. This also applies to information which has come to the knowledge of the garnishee since the filing of the answer. The courts, however, are loath to permit amendments where the original answer was clearly evasive.

While the garnishee's answer is really in the nature of a pleading, it is admissible in evidence only on behalf of the plaintiff. It is the evidence upon which the plaintiff's judgment must be based—unless plaintiff has proved that the answer is false—and any ambiguities or evasive statements must be construed against the garnishee. The garnishee should, therefore, make his statements and answers as clear and concise as possible.

The court will consider the whole answer in arriving at the liability of the garnishee, and all statements which have not been proven false by the plaintiff will be deemed to be true. It is usually provided, also, that unless the plaintiff excepts to the sufficiency or truthfulness of the garnishee's answer within a certain specified time, it shall be considered as true and sufficient. Where, however, the garnishee fails to answer, such default is considered as an admission of liability.

Where the answer of the garnishee admits liability, and judgment has been obtained against the defendant, judgment may also be had against the garnishee. This judgment may not, however, be for a larger amount than that shown in the answer or by proof offered by the plaintiff, nor may it be for a larger amount than the judgment recovered against the defendant.

Where the answer denies liability, and the denial is not refuted by the plaintiff, or the answer is not excepted to within the time allowed, the garnishee must be discharged. If the defendant is not before the court in person, but service has been had upon him only by publication and attachment of his property, judgment for the garnishee operates as a dismissal of the suit against the principal defendant.

In order to make the garnishee liable, the answer must show that the garnishee, at the time of the service upon him, was indebted to the defendant or had property of the defendant under his control. The debt must have been due or to become due absolutely, and not one that was contingent or liable to be defeated by some condition. It must also have been a legal debt; i. e., one that would support an action at law.

"Under our attachment laws a garnishee is not required and has no right to appear in the action. The only answer he makes is to the sheriff at the time of the service of the writ, and that relates only to the property actually attached which he has in his possession or under his control. He has nothing to do with the return of the writ; unless it should be false in some particular which would subject him to a liability beyond that warranted by the facts."

*Clyne v. Easton, Eldridge & Co.*, 148 Cal. 287.

Under the California statute the garnishee is merely required to give an inventory of the property in his possession or the debts due to the defendant. He may be required to appear before the judge and answer under oath as to the effects in his possession.

The "court should allow a garnishee to amend his answer whenever it appears that he has committed a mistake or fallen into an error which could not reasonably have been avoided."

*Smith v. Brown*, 5 Cal. 118.

"The answer of the garnishee is given in response to interrogatories. The law provides for no other answer. It is made with reference to the facts existing at the time of the service of the writ of garnishment. If at that time the garnishee owes the defendant a debt, or has personal property of the defendant in his possession, or under his control, he must so answer, and abide the judgment of the court. But if at that time he is not indebted to the defendant, or has not in his possession or under his control any property of the defendant, he is entitled to a discharge."

*Bragdon v. Bradt* (Colo.), 64 Pac. 248.

(When he has filed his answer, his right is exhausted, and a paper filed as a supplementary answer is not a pleading for any purpose connected with the record.—*Id.*)

(This was a case where the garnishee was in possession of a stock of goods under a mortgage, selling them to pay the mortgage. He set this up in his answer. Held—this was a practical denial of indebtedness, and although it later appeared that there would be a part of the property left after paying the mortgage, at the time of service the title was in the garnishee, and there was nothing to garnish.)

Where the answer of the garnishee acknowledges indebtedness to the defendant and he had notice of the assignment of the debt (prior to filing his answer) any judgment rendered against him will not discharge the indebtedness (as to the assignee).

*Kitzinger v. Beck* (Colo.), 35 Pac. 276.

(C. L. No. 1710-1723 (1710, 1712, 1720) permit a garnishee to appear personally and make his disclosure under oath at the trial or at any time before the trial between the plaintiff and defendant and does not require a written answer from him or permit an order of default against him before such trial.)

*Bank of Hawaii v. Parke*, 15 Haw. 645.

"Thus it will be seen that the statute requires that the garnishee shall be served with the writ of attachment, with notice that any money, property, etc., in his hands has been attached, and with interrogatories, the answer to which is required, and he is given full opportunity to answer the same. By such notice he is fully advised of the claim made by the plaintiff and full opportunity to answer the same. The issue formed under the statute, consisting of his answer, the plaintiff's answer thereto, and his reply, presents an issue of fact which under the statute is required to be tried as an ordinary issue between plaintiff and defendant."

*Eagleson v. Rubin* (Idaho), 100 Pac. 765.

Garnishee's answer deemed true, unless excepted to within three days. This time may be extended, however, by order of the court.—*Id.*

Where garnishee has money of the defendant in his hands, he should not deny indebtedness in answer to garnishment, but should set up his counterclaim, as he will be barred from asserting it under general denial.

*Dolenty v. Rocky Mt. Bell Tel. Co.* (Mont.), 108 Pac. 921.

Garnishee should state in his answer whatever facts he may have in his possession as to the debt. He can set up all defenses he may have, either in law or in equity.

*Field v. Sammis* (N. Mex.), 73 Pac. 617.

(Dictum—it is his duty to set same up.)

The answer of the garnishee makes a prima facie case for him and stands until overthrown by evidence upon the part of the plaintiff, upon whom is thrown the burden of proof.

*Perea v. Colo. Nat. Bank* (N. Mex.), 27 Pac. 322.

(Question of fact to be submitted to the jury, and if they find indebtedness, they must also find nature and amount—otherwise judgment will not stand, as the extent of liability can not be determined.)

Where the maker of a note is summoned as a garnishee in an action against the payee, and he knew or believed when he answered that the note was assigned before the garnishment, he must state that fact in his answer, and if he fails to do so and suffers a judgment in the garnishee proceedings, he will still be liable to the holder of the note.

*Phipps v. Rieley* (Ore.), 16 Pac. 185.

(Should not set up that the said assignment was fraudulent, as he has no interest in such matters.)

Garnishee is merely a stakeholder and should set out all the facts in his answer. If doubtful or uncertain will be construed against him, and where it is equivocal or evasive it will be taken pro confesso.

*Dawson v. Maria* (Ore.), 16 Pac. 413.

Where garnishee files answer admitting indebtedness, and later, before further proceedings, files an amended certificate showing an assignment of which he did not have notice, the creditor did not except to the amended answer, but tried to get judgment on the original answer. Held—statements in the answer deemed true, unless the plaintiff excepts (as provided in the Code) and asks for an examination.

*Batchellor v. Richardson* (Ore.), 21 Pac. 392;

*Trowbridge v. Shinning* (Wash.), 62 Pac. 125.

Under 5409 Ball.—affidavit of plaintiff that he had good reason to believe and did believe that the answer was incorrect, and alleging the facts for such belief, is sufficient to raise an issue.

*McDaniels v. J. J. Connelly Shoe Co.* (Wash.), 71 Pac. 37.

The garnishee in some respects occupies the position of a trustee and is bound to protect, by legal and proper means, the rights of all parties to the chattels or credits attached in his hands; and if he receive notice of the assignment in time to bring it to the attention of the court, it is his duty to do so, and if he fail so to do, neither a subsequent voluntary payment to the creditor or garnishor, nor a judgment against him as garnishee will be available as a defense to an action of the assignee.

*Bellingham Bay Boom Co. v. Briscois* (Wash.), 44 Pac. 153.

Garnishee's answer is conclusive and can not be controverted in the original action, nor can judgment be rendered against him, but if not satisfactory, a separate suit may be instituted with the garnishee as defendant, and judgment rendered for anything of debtor's in his possession and costs.

*Hudson Coal Co. v. Hauf* (Wyo.), 109 Pac. 21.

VIII. FAILURE TO FILE SUFFICIENT ANSWER.—The statutes of the State in which the garnishment proceeding is pending provide within what time the garnishee shall answer. Where he does not file an answer within that time he is in default, and that is taken, in some cases, as a confession that he is indebted, or holds property of the defendant in his hands. This does not mean, however, that final judgment will be entered against him on this default. The answer of the garnishee, where filed,

is the primary evidence of his indebtedness or of the fact that he has property of the defendant in his hands. Where the garnishee is in default, plaintiff must get an order to examine the garnishee; an order to show cause why judgment should not be entered against him; or follow the steps provided in the statutes to secure a final judgment. If the garnishee still refuses or fails to disclose the nature of his relations with the defendant, the plaintiff may introduce evidence showing that the garnishee is indebted, or holds property of the debtor; or he may have his judgment made final upon such refusal or failure, if the statute so provides.

Where the garnishee has filed an answer which is unsatisfactory to the plaintiff, or has filed insufficient replies to interrogatories served upon him, the plaintiff may have an order for his examination on oath before the court, or judge, or referee; or, if the statute so provides, may file additional interrogatories for the garnishee to answer. This is also the case when the answer of the garnishee is evasive, or states mere conclusions or generalities.

If, after the garnishee has been duly served with notice, he still refuses to appear or answer, judgment may be made final against him.

IX. JUDGMENT.—Before a judgment can be entered against the garnishee, it must appear that a judgment has been entered against the defendant, or judgment debtor; and that the garnishee has in his possession, or under his control, property of the defendant, or that he is indebted to the defendant. It must appear that the court had jurisdiction and that all the proceedings in the matter were according to the statutory provisions. As we have seen, garnishment owes its existence solely to the statutes of the State, and those statutes must have been strictly followed. If it appears that the court has not acquired jurisdiction of the defendant, either by personal service within the jurisdiction of the court, or by publication of summons and seizure of property of the defendant within the State; or that the garnishee has not been properly brought before the court; or that the garnishee is not indebted to the defendant, or does not hold any of his property; judgment can not be entered against the garnishee.

Where the answer of the garnishee denies that he is indebted, or that he holds property of the debtor, judgment may be entered against the garnishee, not exceeding in amount, the value of the property, the amount of the indebtedness, or the amount of the judgment against the defendant.

Where the answer of the garnishee denies that he is indebted, or that

he has property of the defendant in his possession or under his control, judgment can not be entered against him in the absence of proof to the contrary. If the plaintiff still believes that the garnishee is liable to the defendant, he may traverse the answer; or, where the statutes so provide, bring a separate action against the garnishee. This is on the theory that a judgment against the debtor operates as an assignment of all his rights to the plaintiff.

This action, or issue, must then be tried as any other issue of fact. To raise an issue the plaintiff must file a complaint against the garnishee, if this is permitted by statute, or by an order of the court, or he must file an affidavit to the effect that he believes the answer of the garnishee to be untrue, and that he believes that the garnishee is indebted to the defendant, or holds certain property belonging to the defendant.

The garnishee is then entitled to raise any objection which he might have raised in an action brought by the defendant or he may show that the court had no jurisdiction of the person of the defendant or of the subject matter of the action. The action is then entirely separate and distinct from the original action and is strictly a proceeding at law against the garnishee. The issue is the same as it would have been in an action between the principal debtor and the garnishee. The burden of proving the garnishee's indebtedness is on the plaintiff, and no presumptions will be indulged against the garnishee. The answer of the garnishee is *prima facie* evidence in his favor, and, unless it is refuted, will entitle him to a discharge.

Where a garnishee disputes his liability to a judgment debtor, the court has no power to order an execution against him, but will direct an issue to try the same, and where the garnishee's alleged indebtedness is to a third person, such party must be summoned, and if necessary an issue ordered to try his liability to the judgment debtor.

*Mt. Royal M. Co. v. Kwong Mow Yuen*, 11 B. C. 171.

The service of a writ of attachment upon a garnishee is not the commencement of an action against him, nor is the return of the sheriff of an admission of indebtedness by him to the attachment defendant conclusive of the fact; and if the garnishee is in no way brought into court or made a party to the action, the court has no jurisdiction to render judgment against him based merely upon the return of the sheriff.

*Broadway Ins. Co. v. Wolters*, 128 Cal. 162.

The Superior Court has jurisdiction to make an order on proceedings supplementary to execution against a judgment debtor, that a garnishee

found indebted to the judgment debtor do pay to the plaintiff the amount of such indebtedness, and such order is, in effect, a judgment on which execution may issue, and which may be appealed from, and which can not be assailed collaterally.

*Brenzan v. Drobez*, 93 Cal. 647.

A person ordered under 717 C. C. P. to answer concerning property of the defendant alleged to be in his possession, or for indebtedness alleged to be due from him to the defendant, may be punished for contempt for disobeying the order; but a judgment by default can not be taken against him, and such a judgment is without jurisdiction and void.

*Hibernia S. & L. Soc. v. Superior Court*, 56 Cal. 265;

*State Bank v. Harecourt* (Colo.), 38 Colo. 247.

The words "unless he be already in court" do not authorize rendition of judgment against a garnishee who files an answer denying all liability to the defendant, as the statute requires in express terms that when the answer is controverted *scire facias* shall be served upon the garnishee and he is under no obligation to appear after his answer has been filed, until he is served with further notice; as, when his answer shows no liability, unless traversed by affidavit, he is entitled to his discharge.

*State Bank v. Harecourt*, 58 Colo. 243.

It is only in case the answer of the garnishee shows that he is indebted to the defendant or has personal property in his possession or under his control or in case he denies and the answer is successfully controverted, that a judgment against him is lawful. There must be a clear admission in the answer, unless the denial is overcome by another statement in the answer, or unless the answer is shown to be untrue.

*Bragdon v. Bradt* (Colo.), 64 Pac. 248;

*Fleming v. Baxter* (Colo.), 38 Pac. 57.

Judgment against the defendant is prerequisite to proceedings against the garnishee.

*Henkel v. Bimetallic Bank* (Colo.), 58 Pac. 336;

*Tabor v. Bank of Leadville* (Colo.).

Where garnishee denies indebtedness, the creditor can not have judgment without proof of that debt.

*Denver T. & Ft. W. Ry. v. Smeeton* (Colo.), 41 Pac. 836.

Can not have default against the garnishee before the trial between the plaintiff and defendant.

*Bank of Hawaii v. Parke*, 15 Haw. 645.

When a debt claimed to be due is attached and the debtor has been examined and the indebtedness denied, the court has no jurisdiction to enter

judgment on such examination. The garnishee has the right to a trial of the case on the issues raised.

*Sindenthal v. Burke* (Idaho), 22 Pac. 419.

The default provided for in Rev. Codes 3410, is a default for want of an answer and does not mean a default judgment. The mere failure of the garnishee to answer does not prove that he is indebted to the defendant and the case must be heard before the court or judgment and proof made, showing the indebtedness of garnishee to defendant.

*Shumake v. Shumake*, 17 Idaho 649.

Proceeding can only be instituted where garnishee refuses to give the certificate required by the statute, or where the certificate is unsatisfactory, and then only by serving written allegations.

*Adamson v. Frazier* (Ore.), 66 Pac. 810.

Where the garnishee, after service and before trial disposes of the property in his hands—and the value of the property exceeded the amount of the debt—the court has power to enter judgment to the amount of the plaintiff's demand.

*Eidenmiller v. Elder* (Wash.), 73 Pac. 687;

*Trowbridge v. Spinning* (Wash.), 62 Pac. 125.

When a garnishee denies the indebtedness, the court has no authority to decide the issue, under 385, providing that the judgment may order property of the judgment debtor to be applied to the satisfaction of the judgment, since by 386 the court is expressly directed in such case to order the judgment debtor to bring an action against the garnishee to determine the facts.

*Everton v. Powell* (Wash.), 28 Pac. 536.

Before judgment can be rendered against the garnishee, it must clearly appear that he has property belonging to the judgment debtor, or that he is indebted to him.

*Timm v. Stegman* (Wash.), 32 Pac. 1004.

#### INSURANCE

Several questions have arisen in respect to garnishment of insurance companies, and although there seem to be no decisions on these points in any of the Pacific Coast States, it might be well to take the matter up briefly at this time.

It is a well settled rule that in order to reach a debt owing, or a credit due, to the defendant, that debt or credit must be due or owing absolutely, or to become due by the mere lapse of time. Where the liability of the garnishee is apt to be defeated by the happening of some event,

or by the non-performance of a condition precedent, garnishment will not lie.

I. It would seem then that the garnishment process would not bind the insurance company where service was made before proofs of loss had been filed. The liability of the company is conditioned upon making proof of the loss, and the company can not be charged by the service of process after the loss and before the required proof of the same has been made. Although the condition upon which the liability arises has happened—i. e., there has been a loss by fire—there is still another condition by which the liability may be defeated; viz., the failure to file proofs.

*Davis v. Davis*, 49 Me. 282;

*Nickersen v. Nickersen* (Me.), 12 Atl. 880;

*Gies v. Bechtner* (Minn.), 12 Minn. 183;

*Dowling v. Lancashire* (Wis.), 61 N. W. 76;

*Lovejoy v. Hartford* (Ill.), 11 Fed. 63;

*Martz v. Det. F. & M.*, 28 Mich. 201.

"It has been repeatedly held by this court that a debt, in order to be subject to garnishment, must be owing absolutely at the time of the service of process, although it may be payable subsequently (citing). Where the question whether there will be any indebtedness or not depends entirely upon future contingencies, the garnishee can not be held (citing). In this case it is clear that there was no absolute liability on the part of the insurance companies at the time of the service of process. A liability might arise in the future after proofs of loss had been served, and the time had elapsed within which the option to replace the goods might be exercised, but these were contingencies which might never happen (citing)."

*Dowling v. Lancashire* (Wis.), 61 N. W. 76.

The provisions of the policy as to notice, loss, proof, etc., must be substantially complied with before the claim is payable; they are conditions precedent to the right of the assured to maintain an action, unless they are waived by the insurer. Until they are complied with or waived, the claim may never become payable, and until then it is not the subject of garnishment.

*Gies v. Bechtner* (Minn.), 12 Minn. 183.

Proofs of loss may be waived by the company, however, and in that case garnishment would lie, even in the absence of proofs. If the company and the assured had agreed upon the amount of the loss, and if all other conditions had been fulfilled, the courts would not permit the



insured to defeat a recovery on the part of his creditor by refusing to file proofs.

II. It would seem also that, where the company has the option to rebuild, garnishment would not hold any moneys in the possession of the company. If the company has decided to rebuild or replace the destroyed property, it owes nothing to the insured. Where they have waived that right, however, or have lost it by the lapse of time, garnishment would lie.

Martz v. Det. F. & M., 28 Mich. 201;

Stone v. Mutual (Md.), 22 Atl. 1051;

Dowling v. Lancashire, 60 N. W. 76;

Hurst v. Home Prot. F. Co. (Ala.), 1 Ro. 609;

Godfrey v. Macomber, 128 Mass 188.

In both of the above cases, however, the company would be liable in those States where it is provided that the process attaches to effects coming into the hands of the garnishee after the service of the process.

III. Where the insurance covers on property exempt from execution—as on a homestead—garnishment will not reach funds in the hands of the company, although the loss has been settled and all that remains to be done is to pay the money to the insured.

Houghten v. Lee, 50 Cal. 101;

Puget S. D. B. Co. v. Jeffs (Wash.), 59 Pac. 982.

IV. Where the policy is issued to a mortgagor of property, "loss, if any, payable to the mortgagee, as his interest may appear," garnishment will not reach money due under the policy, unless there is an amount left over after the mortgagee's claim has been satisfied. If the interest of the mortgagee is larger than the amount of the loss, or the amount to be paid under the policy, the garnishment has no effect, but if the amount due the insured is larger than the claim of the mortgagee, the service of process will bind all sums in excess of the mortgagee's claim.

Mansfield v. Stevens (Minn.), 16 N. W. 455;

Coykendall v. Ladd (Equit.) (Minn.), 21 N. W. 733;

Mansen v. Phoenix (Wis.), 24 N. W. 407;

Edwards v. Ogrie (Wis.), 60 N. W. 782.

"By the stipulation in the policy providing for payment to the mortgagee, the amount was already appropriated for the payment or security of the mortgagee; and his interest being shown to be still subsisting, and to exceed the amount of the claim, it became evident that there was nothing due from the garnishee to defendant subject to garnishment by plaintiff.

"Where the evidence shows that the debt is payable to a third party, and that the defendant is not entitled to it, the disclosure itself is sufficient to protect the mortgagee, and he is entitled to be discharged, unless further proceedings by plaintiff are allowed to be taken under the statute to bring in such party, in order to test the validity of his claim."

Mansfield v. Stevens (American) (Minn.), 16 N. W. 455.

(Loss had been adjusted—\$2500—mortgage \$4000.)

(And this is true, although mortgage may not have been recorded. While this mortgage would not be good as to subsequent mortgagees without notice, it is good between the parties, and the mortgagee has an insurable interest.)

V. The mere fact that the exact amount of the loss has not been determined will not invalidate the garnishment proceedings where all conditions have been complied with. It has been held that there is no liability upon the part of the company until after adjustment, and the amount has been ascertained.

Bucklin v. Powell, 60 N. H. 119;

McKean v. Turner, 45 N. H. 203;

Katz v. Sorsby, 34 La. Ann. 588.

But the better rule seems to be that, where the liability is not disputed, but merely the amount, garnishment will lie.

Knox v. Prot. Co. (Conn.), 25 Am. Dec. 33;

Girard Co. v. Field, 45 Pa. St. 129.

VI. Garnishments take precedence in the order of their service. Priority in time is priority in right. This is true even where they are served in different States, as process of the courts of those States. While the garnishee can not plead a prior garnishment in the same or in another State, or a suit by his creditor, as a defense to the garnishment proceedings, he may set those matters up in his answer and the court will either stay the proceedings, or, if it allows the same to go to judgment, it will grant a stay of execution. The garnishee will not be forced to pay the amount twice, except where the double liability is imposed as a consequence of his own fraudulent, evasive, or careless conduct.

VII. The company is liable for any payments made by it after a valid service of process. The mere fact that a draft has been drawn upon it before the service of the process will not relieve it from liability, as the draft does not operate as an assignment of the funds in the hands of the company until it has been accepted or paid. It would seem that even drawing a check for the amount of the loss would not defeat the garnishment, unless the check had been certified or paid by the bank. If a

check or draft has been given before, and service of process is then made on the company, the only safe way to do is to stop payment.

VIII. It is never safe for the company to satisfy the claim of a garnishee, by turning funds of the insured in its hands over to his creditor. This is true no matter whether or not there have been subsequent garnishments. The safest way is to make affidavit that other parties claim funds in the hands of the garnishee, and ask for an order from the court that these parties may be interpleaded.

IX. Under most of the statutes the garnishee may, upon being served with process, turn the money over to the sheriff, whose receipt will protect the garnishee. But if the garnishee, having notice of other claims, or having been served with process in other garnishments, pays the money to the sheriff or into court, without giving notice of the other claims and bringing them to the attention of the court; he will be treated as a volunteer and will not be protected by any order or judgment made or rendered.

#### ALASKA CHAPTER IV.

967. The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to any such judgment, as in this chapter provided, in the following cases:

First: In an action upon a contract, express or implied, for the direct payment of money, and which is not secured by a mortgage, lien, or pledge upon real or personal property, or, if so secured, when such security has been rendered nugatory by the act of the defendant.

Second: In an action upon a contract, express or implied, against a defendant not residing in the district.

*Williams v. Gullick*, 3 Pac. 469;

*Case v. Noyes*, 19 Pac. 104;

*Smith v. Conrad*, 31 Pac. 398.

971. The marshal shall note upon the writ the date of its delivery to him, and shall make a full inventory of the property attached, and return the same with the writ.

972. Other personal property (not capable of manual delivery, or in the possession of third parties) shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor.

972. From the date of the attachment until it be discharged or the writ executed, the plaintiff, as against third persons, shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions in the next preceding section as to real property. Any person, association, or corporation, men-

tioned in subdivision 3 of the section last preceding, from the service of a copy of the writ and notice, as therein provided, shall, unless such property stock or debts be delivered, transferred or paid to the marshal, be liable to the plaintiff for the amount thereof until the attachment be discharged or any judgment recovered by him be satisfied.

975. Whenever the marshal, with a writ of attachment against the defendant shall apply to any person or officer mentioned in subdivision 3 of Section 972 for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate designating the amount and description of any property in his possession belonging to the defendant, or any debt owing to the defendant, or the number of rights or shares of the defendant in the stock of the association or corporation, with any interest, or profits, or encumbrance thereon. If such person or officer refuse to do so, or if the certificate when given be unsatisfactory to the plaintiff, he may be required by the court, or judge thereof, where the action is pending, to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

*Carter v. Koshland*, 8 Pac. 556;

*Batchellor v. Richardson*, 21 Pac. 392;

*Barr v. Warner*, 62 Pac. 899;

*Case v. Noyes*, 19 Pac. 104;

*Altona v. Dabney*, 42 Pac. 521;

*Burns v. Payne*, 49 Pac. 884;

*Adamson v. Fraser*, 66 Pac. 810;

*Colbath v. Haefer*, 73 Pac. 10.

976. Personal property mentioned in subdivision 3 of Section 972 may be delivered to the marshal without an action, and his receipt therefor shall be a sufficient discharge accordingly.

985. The order provided for in Section 974 shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter, upon such order, such person, or association, or corporation, shall be known as the garnishee.

*De Witt v. Kelly*, 23 Pac. 668;

*Adamson v. Fraser*, 66 Pac. 811;

*Adamson v. Mariner*, 67 Pac. 300.

(Note—Reference should be to 975)

986. After the allowance of the order and before such garnishee or officer thereof shall be thereby required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories, touching any of the property liable to attachment as the property of the defendant, as provided in subdivision 3 of Section 972, and to which such garnishee or officer thereof is required a certificate, as provided in Section 975.

*Case v. Noyes*, 19 Pac. 104, 21 Pac. 46;

*Adamson v. Mariner*, 67 Pac. 300;

*Smith v. Conrad*, 31 Pac. 398.

987. On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he shall return the allegations and interrogatories of the plaintiff to the court or judge, with his written answer thereto, unless for good cause shown further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

*Faul v. Alaska G. M. Co.*, 14 Fed. 657;

*Phipps v. Rieley*, 16 Pac. 185;

*Mullaney v. Evans*, 54 Pac. 886;

*Dawson v. Maria*, 16 Pac. 413;

Case v. Noyes, 19 Pac. 104.

988. If the garnishee or officer shall fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action, have judgment against the garnishee for such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

989. The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency, within such time as may be prescribed or allowed, and if the same be adjudged insufficient, such garnishee or officer may be allowed to amend his answer on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to give a sufficient answer.

990. The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of facts between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

991. If by the answer it shall appear, or if upon trial it shall be found that the garnishee, at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice had any property of the defendant's liable to attachment, as provided in subdivision 3 of Section 975, and as to which such garnishee or officer thereof is required to give a certificate, as provided in Section 975, beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may, at any time before judgment, discharge himself by delivering, paying or transferring the property to the marshal.

Caldwell E. & T. Co. v. Porter, 95 Pac. 1.

992. Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. Witnesses, including the defendant and garnishee or officer thereof, may be required to appear and testify upon such proceedings against a garnishee, as upon the trial of an issue of fact.

Case v. Noyes, 19 Pac. 104.

993. The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in Section 975, and at any time thereafter before judgment against the garnishee, by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as contempt.

1131. **Order to Examine Garnishee.** Whenever the marshal, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision 3 of Section 972 for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give the marshal a certificate in the manner prescribed in Section 975. If such person or officer refuses to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may, in like manner, have the order prescribed in such section against such person or officer. Thereafter the proceedings upon such order shall be conducted in the manner prescribed from Section 975 to 984, inclusive.

790. No insurance company, corporation, or association, or firm, or individual shall be permitted to transact a life, fire or marine insurance business in the district until it shall have filed with the clerk of each

division of the District Court a power of attorney, which shall set forth that such company is a corporation or duly organized insurer (naming the principal place of business of the company, and the principal place of business for the Pacific Coast), which power of attorney shall authorize a citizen and resident of the district to receive and accept service in any proceeding in a court of justice in the district. If any attorney of any insurance company, appointed under the provisions of this section, shall remove from the district or become disqualified in any manner from accepting service, and if any citizen or resident of the district shall have any claim by virtue of any insurance policy issued by any such company not represented by attorney in the district, valid service may be made on such company by service on the clerk of the District Court or any division thereof; provided, in such case the clerk of the District Court shall immediately notify such company and the principal agent for the Pacific Coast, enclosing a copy of the service by mail, postpaid; and, provided further, in such case no proceedings shall be had within sixty days after such service on the clerk.

Continental v. Riggen, 48 Pac. 476;

Gilbert v. New Zealand, 49 Fed. 858.

#### ARIZONA Garnishment

363. (Section 32). The clerks of the District Courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued as hereinbefore provided.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just, due and unpaid, and that defendant has not, within his knowledge, property in his possession, within this territory, subject to execution, sufficient to satisfy such debt, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a judgment, property in his possession, within this territory, subject to execution, sufficient to satisfy such judgment.

364. (Sec. 33). In the case mentioned in subdivision 2 of the preceding section, the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the suit in the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment.

365. (Sec. 34). Before the issuance of the writ of garnishment the plaintiff or some one in his behalf shall make application therefor, in writing, under oath, stating the facts authorizing the issuance of the writ, and that the affiant has reason to believe that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company, or has an interest therein.

366. (Sec. 35). When the foregoing requisites have been complied with the judge, or clerk, or justice of the peace, as the case may be, shall file the affidavit, and bond, if any, among the papers in the cause, and shall immediately issue a writ of garnishment directed to the sheriff or any constable of the county where the garnishee is alleged to reside or be, commanding him forthwith to summon the garnishee to appear before

the court, out of which the same is issued, within the time specified in the writ, to answer upon oath what, if anything, he is indebted to the defendant, defendants, or any of them, and was when such writ was served, and what effects, if any, of the defendant, defendants, or any of them, he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant, defendants, or any of them, or have effects belonging to him or them in their possession.

367. (Sec. 36). Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company in which the defendant is owner of shares, or interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served.

368. (Sec. 37). The following form of writ may be used:

"The Territory of Arizona, to the Sheriff or Any Constable of \_\_\_\_\_ County, Greeting:

"Whereas, in the \_\_\_\_\_ court of \_\_\_\_\_ county (if a justice court state also the name or number of the precinct), in a certain cause wherein A. B. is plaintiff and C. D. is defendant, the plaintiff, claiming an indebtedness against the said C. D. of \_\_\_\_\_ dollars, besides interest and costs of suit, has applied for a writ of garnishment against E. F., who is alleged to be a resident of your county (or to be within your county, as the case may be), therefore you are commanded forthwith to summon the said E. F., if to be found within your county, to be and appear before the said court within the time mentioned in the next section, after the service of summons, exclusive of the day of service, then and there to answer upon oath what, if anything, he is indebted to the said C. D., and was when this writ was served upon him, and what effects, if any, he has in his possession, and had when the writ was served, and what other persons, if any, within his knowledge, are indebted to the said C. D., or have effects belonging to him in their possession (and if the garnishee be an incorporated or joint stock company therein, then the writ shall proceed, and further to answer what number of shares, if any, was served). Herein fail not, but of this writ make due return as the law directs."

369. (Sec. 38). The time in which the writ shall require the garnishee to answer shall be as follows:

First: In District Courts:

(1) If the garnishee is served within the county in which the action is brought, ten days.

(2) If the garnishee is served out of the county, but in the district in which the action is brought, twenty days.

(3) In all other cases, thirty days.

Second: In Justices' Courts:

(1) If the garnishee is served within the precinct in which the action is brought, five days.

(2) If served without the precinct, but within the county, ten days.

(3) If served out of the county, fifteen days.

370. (Sec. 39). The writ of garnishment shall be dated and tested as the other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney for that purpose.

371. (Sec. 40). The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy

thereof to the garnishee, and shall make return thereof as of other summonses.

372. (Sec. 41). From and after the service of such writ of garnishment it shall not be lawful for any garnishee to pay to the defendant or defendants, or any of them, any debt, or deliver to him or them any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest, and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effects, shares or interest as may be necessary to satisfy the plaintiff's demand; provided, however, that the defendant may at any time before judgment replevy any effects, debts, shares or claims of any kind seized or garnished, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who issued the writ of garnishment, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the effects, debts, shares or claims of any kind seized or garnished, such value to be determined by the judge or justice of the peace, as the case may be conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, or for the payment of the value of the effects, debts, shares or claims so garnished, as the case may be, which bond, when properly approved, shall be filed among the papers in the cause in the court in which the suit is pending; and in all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit. If judgment is rendered in favor of the plaintiff it might be against the defendant, and the sureties on such replevy bond for the amount of such judgment and costs.

373. (Sec. 42). The answer of the garnishee shall be under oath, in writing and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment; if a partnership be the defendant, or if there be more than one defendant, then it shall be the duty of the garnishee to answer, under oath, as to such partnership and as to each member thereof, or as to each defendant named in the writ.

374. (Sec. 43). Should it appear from the answer of the garnishee that he is not indebted to the defendant or defendants, or any of them, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant or defendants, or any of them, and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant, defendants, or any of them, are alleged to be the owner or owners of any shares of stock or interest therein, if it shall further appear from such answer that the defendant, defendants, or any of them, are not and were not when the writ was served the owner or owners of any such shares or interest in such company; and should the answer of the garnishee be not controverted as hereinbefore provided, the court shall enter judgment discharging the garnishee.

375. (Sec. 44). Should the garnishee fail to make answer to the writ within the time specified in the writ it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs.

376. (Sec. 45). Should it appear from the answer of the garnishee, or otherwise, that he is indebted to the defendant, defendants, or any of them, or that the garnishee has effects of the defendant, defendants, or any of them, in his possession, or, if the garnishee be an incorporated or

joint stock company that the defendant, defendants, or any of them, are the owner or owners of shares of stock or interested in such company, and that the amount of such indebtedness or the value of such effects, shares or interest, exceeds the amount necessary to satisfy the plaintiff's demand, with interest, and probably costs of suit, the court may, at any time after the filing of such answer, by order, direct that sufficient of such debts, effects, shares or interest be held to satisfy the plaintiff's demand, with interest, and probably costs of suit, and that the remainder of such debts, effects, shares or interest be released from such garnishment.

377. (Sec. 46). Should it appear from the answer of the garnishee, or should it be otherwise made to appear as hereinafter provided that the garnishee is indebted to the defendant, defendants, or any of them, in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant, defendants, or any of them, from the garnishee, unless such amount shall exceed the amount of the plaintiff's judgment against the defendant, or defendants, or any of them, with interest and costs, in which case it shall be for the amount of such judgment, interest and costs.

378. (Sec. 47). Should it appear from the garnishee's answer, or otherwise, any effects of the defendant, defendants, or any of them, liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff, or any constable present, an execution in favor of the plaintiff against the defendant, defendants, or any of them, such effects or so much thereof as may be necessary to satisfy such execution.

379. (Sec. 48). Should the garnishee be adjudged to have effects of the defendant, defendants, or any of them, in his possession, as provided in the preceding section, fail or refuse to deliver them to the sheriff, or such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause, within ten days, why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

380. (Sec. 49). Where the garnishee is an incorporated or joint stock company and it appears from the answer or otherwise that the defendant, defendants, or any of them, are, or were when the writ of garnishment was served, the owner or owners of any shares of stock in such company, or any interest therein, the court shall render a decree ordering the sale, under execution, in favor of the plaintiff against the defendant, or defendants, of such shares or interest of the defendant, or defendants, in such defendants in such company, or so much thereof as may be necessary to satisfy such execution.

381. (Sec. 50). The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff or constable making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold.

382. (Sec. 51). Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant, or defendants, had in such shares or stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself.

383. (Sec. 52). If the plaintiff should not be satisfied with the answer of the garnishee he may controvert the same, within twenty days after the filing of such answer if the cause is pending in the District Court, and within five days after the filing if in a Justices' Court, by an affidavit in writing, signed by him or some one for him, stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same is incorrect.

384. (Sec. 53). The defendant, defendants, or any of them, may also in like manner, and within the like time, controvert the answer of the garnishee.

385. (Sec. 54). When the answer of the garnishee is controverted, as provided in the two preceding sections, an issue shall be formed, as hereinafter provided, and tried as other cases.

386. (Sec. 55). The party controverting the answer of the garnishee shall, within ten days after the filing of his affidavit controverting such answer, tender an issue in the form of a pleading, setting forth the reasons why he claims that the answer of the garnishee is incorrect, and shall serve a copy thereof upon the garnishee, or his attorney, and upon the opposing party, or his attorney, and shall file the same with the clerk of the garnishee shall file his answer to such pleading and shall serve a copy thereof upon the respective parties or their attorneys.

387. (Sec. 56). It shall be the duty of the clerk of the court, or the justice of the peace, as the case may be, upon the filing of the pleadings mentioned in the preceding section, to docket the issue so formed under the title of the original cause, as issue in garnishment, and such issue shall thereupon stand for trial as other cases.

388. (Sec. 57). Earnings for personal services rendered at any time within thirty days next preceding the service of the writ shall not be subject to garnishment when it shall be made to appear by the affidavit of the debtor or otherwise that such earnings are necessary for the support of his family, supported wholly or in part by his labor.

389. (Sec. 58). Where the garnishee is discharged upon his answer the cost of the proceeding, including reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, the costs shall be taxed against the defendant and included in the execution provided for in this chapter; where the answer is contested the costs shall abide the issue of such contest.

390. (Sec. 59). It shall be a sufficient answer to any claim of the defendant, or defendants, against the garnishee, founded on any indebtedness of such garnishee, or on the possession by him of any effects, where the garnishee is an incorporated or joint stock company in which the defendant, or defendants, or any of them, were owner, or owners, of shares or stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter.

(Took effect September 1, 1901)

#### BRITISH COLUMBIA

##### CHAPTER XIV.

##### An Act Relating to the Attachment of Debts

His majesty, by and with the advice and consent of the legislative assembly of the Province of British Columbia, enacts as follows:

## Short Title

1. This act may be cited as the "Attachment of Debts Act," 1903-04, C. 7, S. L.

## Interpretation

2. In this act, unless the context otherwise requires, "Judge" means a judge of the Supreme Court; "District Registrar" means, and shall include, a district registrar or a deputy district registrar of said court.

## Attachment of Debts

3. A judge or a district registrar may, upon the ex parte application of any plaintiff, or judgment creditor, or person entitled to enforce a judgment or order for the payment of money, upon affidavit by himself or his solicitor, or some other person, or persons, aware of the facts, respectively, stating, in case a judgment has been recovered or an order made, that it has been recovered or made, and that it is still unsatisfied, and to what amount, or, in case a judgment has not been recovered, that an action is pending, the time of its commencement, the nature of the cause of action, and the actual amount of the debt, claim, or demand, and that the same is justly due and owing, after making all just discounts, and stating, in either of the said cases, that any other person is indebted or liable to the defendant or judgment debtor, or person liable to satisfy such judgment or order, and is within the jurisdiction of the court, order that all debts, obligations, and liabilities owing, payable or accruing due from such third person (hereinafter called the "garnishee") to the defendant or judgment debtor, or person liable to satisfy such judgment or order (as the case may be), shall be attached to answer the judgment of the plaintiff to be recovered, or of the judgment creditor which has been recovered, or the order which has been made (as the case may be); provided, always, that no debt due or accruing due to a mechanic, workman, laborer, servant, clerk, or employee for, or in respect to his wages or salary, shall be liable to seizure or attachment under this act, or any other law or enactment relating to the attachment or garnishment of debts, whether before or after judgment, unless the debt exceeds the sum of \$40, and then only to the extent of the excess; provided further that nothing in the above proviso contained shall apply to any case where the debt has been contracted for board or lodging, and in the opinion of the judge the exemption of \$40 is not necessary for the support and maintenance of the debtor's family.

4. Except as hereinafter mentioned, the expression "debts, obligations, and liabilities," in the last preceding section, and that expression or any of the words composing it, when used in any order made under the said section, shall not comprise an obligation or liability not arising out of trust or contract, unless judgment shall have been recovered thereon against the garnishee, but (though not so as to restrict further than as aforesaid the general sense of the words) the said expression in the said section or in any such order shall be construed to include all claims or demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract where such claims and demands could be made available under equitable execution.

5. Affidavits in the forms in the schedules to this act, or to the like effect, shall be held to be sufficient.

6. The affidavit referred to in Section 3 may, as to the indebtedness, obligation, or liability of the third person, be made on the information and belief of the deponent.

7. Service of an order that debts, obligations, or liabilities owing, payable, or accruing due to the defendant, judgment debtor, or person

liable to satisfy such judgment or order shall be attached or notice thereof to the garnishee in such manner as the judge or district registrar shall direct, shall bind such debts, obligations, or liabilities in his hands from the time of such service or notice.

8. In the attaching order the amount attached shall be limited to the amount due or claimed to be due by the defendant, judgment debtor, or person liable to satisfy the judgment or order, along with a reasonable sum for costs.

9. (1) If the garnishee does not forthwith pay into court the amount payable in respect of the debts, obligations, and liabilities attached, or the amount limited by the attaching order, and does not dispute the said debts, obligations, and liabilities, or some one or more of them claimed to be due, owing, or payable from him to the defendant, judgment debtor, or person liable under the judgment or order for the payment of money, or if he does not appear upon notice to him, then a judge may order the garnishee to pay into court the amount appearing due from the garnishee, or so much thereof as may be sufficient to satisfy the principal judgment, or order and the costs of the garnishing proceedings, or an amount estimated to be sufficient to satisfy the judgment expected to be recovered and costs, and also the costs of the garnishing proceedings, or if judgment has been recovered or an order for the payment of money made, a judge may order the garnishee to pay to the person entitled the amount appearing due from the garnishee, or sufficient thereof to satisfy the principal judgment or order, and the costs of the garnishing proceedings.

(2) No order shall be made for payment out of court of moneys paid in by the garnishee or for payment by the garnishee to the person entitled, without notice to the defendant, judgment debtor, or person liable on the principal judgment or order, unless a judge shall, under special circumstances, dispense with such notice.

10. Execution may issue upon any such order so made, or any other proceedings may be taken to enforce such order.

11. If the claim or demand be not due at the time of the attachment, an order may be made for payment thereof at maturity, and execution may issue thereon when it matures.

12. If the garnishee disputes his liability, a judge, instead of making an order for payment into court or otherwise, may order that any issue or question necessary for determining the liability of the garnishee be tried or determined in any manner in which any issue or question in any action may be tried or determined.

13. Where, after an order for the attachment of debts, obligations, or liabilities has been made, it is suggested by the garnishee that the debt, obligation or liability sought to be attached belongs to or is claimed by some third person, or that any third person has a lien or charge upon it, a judge may order such third person to appear and state the nature and particulars of his claim upon the same.

14. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the judge may order to appear, or in case of such third person or other person not appearing when ordered, the judge may order payment by the garnishee, or may order an issue or question to be tried or determined, and may bar the claim of such third person or other person, or may take such further order as he may see fit, upon such terms, in all cases with respect to the lien or charge (if any) of such third person, and as to costs, as the judge thinks just and reasonable.

15. A judge may take evidence upon and hear and dispose of summarily, in chambers, any question as to the liability of the garnishee, or as to the claim of a third party or other person without directing formal trial of an issue.

16. The garnishee, upon paying into court the amounts payable in respect of the debts, obligations, and liabilities attached, or the amount limited by the attaching order, or upon complying with any order of the court or a judge thereof made respecting the debts, obligations, or liabilities due and owing by him, shall be entitled to his costs as between solicitor and client. Such costs, if not ordered to be satisfied in any other way, shall be paid by the garnishing plaintiff. This provision shall not apply in case the garnishee unsuccessfully resists payment, either in whole or in part, in which case the judge shall deal with the costs.

17. Payment by the garnishee into court of the amounts payable in respect of the debts, obligations, and liabilities attached, or the amount limited by the attaching order or in compliance with an order of a judge, or satisfaction of such order, either by execution, levied or otherwise, under any such proceedings as aforesaid, shall be a valid discharge as against the defendant debtor to the amount paid, levied, or otherwise made, although such proceedings may be set aside or the judgment reversed.

18. There shall be kept by each district registrar a debt attachment book, and in such book entries shall be made of the attaching order and all proceedings thereon, with names, dates, and statements of the amount recovered, and such book may be searched and copies of any entries made therein may be taken by any person upon application to the district registrar.

19. All matters referred to in Sections 2 to 18, both inclusive, shall be governed by this act, notwithstanding any rules of court upon the subject.

20. In addition to all other powers vested in the Supreme Court or a judge thereof, the said judge may, on the application of a plaintiff, or judgment creditor, upon a similar affidavit to that required under Section 3 hereof, order that all debts stated by affidavit to be, or believed to be, owing or accruing from any partnership, firm, or company to the judgment debtor, or defendant, shall be attached to answer the judgment debt, or judgment to be recovered, and the same proceedings shall thereupon be had as an execution against the said firm and otherwise as if the order had been made on an individual debtor, and process may issue against the partnership in the name of the firm in the same manner as may now be done in any action or other proceeding.

21. Service of any such order on any member of a partnership, firm or secretary of a company, at their usual place of business (if any) in the province, or on any authorized agent of any such firm or company shall be sufficient for all purposes.

22. The court or judge may make an order attaching any number of debts owing from different debtors to the judgment debtor, or defendant, and the service of a notice of the purport of such order, with information where such order can be seen, shall be sufficient to bind the debts in the hands of the garnishees.

#### CALIFORNIA

537. The plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, in the following cases:

1. In an action upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in this State, and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such

security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a contract, express or implied, against a defendant not residing in this State.

3. In an action against a defendant, not residing in this State, to recover a sum of money as damages arising from an injury to property in this State, in consequence of negligence, fraud, or other wrongful act.

538. Affidavit for Attachment—What to Contain. The clerk of the court must issue the writ of attachment, upon receiving an affidavit by or on behalf of plaintiff, showing:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims) upon a contract, express or implied, for the direct payment of money, and that such contract was made or is payable in this State, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; or,

2. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims) and that the defendant is a non-resident of the State;

3. That the plaintiff's cause of action against defendant is one to recover a sum of money as damages (specifying the amount thereof) arising from an injury to property in this State in consequence of the negligence, fraud, or other wrongful act of defendant, and that the defendant is a non-resident of the State; and,

4. That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

539. Undertaking on Attachment, Exceptions to Sureties. Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, in the sum of not less than two hundred dollars (\$200) and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that if the defendant recovers judgment the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and that if the attachment is discharged on the ground that the plaintiff was not entitled thereto under section five hundred and thirty-seven (537), the plaintiff will pay all damages which the defendant may have sustained by reason of the attachment, not exceeding the sum specified in the undertaking. At any time after the issuing of the attachment, but not later than five days after actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two, nor more than five, days must justify before a judge or county clerk in the same manner as upon bail on arrest.

540. Writ—To Whom Directed and What to State. The writ must be directed to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be, attached, in which case, to take such undertaking. Several writs may be issued at the same time to the sheriffs of different counties.



542. **How Real and Personal Property Shall Be Attached.** The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in section five hundred and forty (540) be not given, as follows:

5. Debts and credits and other personal property, not capable of manual delivery, must be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits and other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, of the credits and other personal property in his possession, or under his control, belonging to the defendant, are attached in pursuance of such writ, except in the case of attachment of growing crops, a copy of the writ, together with a description of the property attached, and a notice that it is attached, shall be recorded the same as in the attachment of real property.

543. **Attorney to Give Written Instructions to Sheriff What to Attach.** Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, the sheriff must serve upon such person a copy of the writ, and a notice that such credits, or other personal property or debts, as the case may be, are attached in pursuance of such writ.

544. **Garnishment—When Garnishee Liable to Plaintiff.** All persons having in their possession, or under their control, any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged, or any judgment recovered by him be satisfied.

545. Any person owing debts to the defendant, or having in his possession, or under his control, any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property, capable of manual delivery, to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, a memorandum to be given of all other personal property, containing the amount and description thereof.

546. **Inventory—How Made. Party Refusing to Give Memorandum May Be Compelled to Pay Costs.** The sheriff must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

547. **Perishable Property—How Sold. Accounts Without Suit to Be Collected.** If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution. The proceeds, and other property attached by him, must be retained by him to answer any judgment that may be recovered in the action unless sooner subjected to execution upon another judgment recovered previous

to the issuing of the attachment. Debts and credits attached may be collected by him, if the same can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

549. **When Property Claimed by a Third Party—How Tried.** If any personal property attached be claimed by a third person as his property the same rules shall prevail as to the contents and making of said claim, and as to the holding of said property, as in case of a claim after levy upon execution, as provided for in Section 689 of the C. C. P.

#### Proceedings Supplemental to Execution

761. **Any Debtor of the Judgment Debtor May Pay the Latter's Creditor.** After the issuing of an execution against property, and before its return, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt is a sufficient discharge of the amount so paid.

717. **Examination of Debtors of Judgment Debtor, or of Those Having Property Belonging to Him.** After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding \$50, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear at a specified time and place before him, or a referee appointed by him, and answer concerning the same.

718. **Witnesses Required to Testify.** Witnesses may be required to appear and testify before the judge or referee, upon any proceeding under this chapter, in the same manner as upon the trial of an issue.

719. **Judge May Order Property to Be Applied on Execution.** The judge or referee may order any property of the judgment debtor, not exempt from execution, in the hands of such debtor, or any other person, or due to the judgment debtor, to be applied toward the satisfaction of the judgment, but no such order can be made as to money or property in the hands of any other person or claimed to be due from him to the judgment debtor, if such person claims an interest in the property adverse to the judgment debtor or denies the debt.

720. **Proceedings Upon Claim of Another Party.** If it appears that a person or corporation, alleged to have property of the judgment debtor, or to be indebted to him, claims an interest in the property adverse to him, or denies the debt, the judgment creditor may maintain an action against such person or corporation for the recovery of such interest or debt; and the court or judge may, by order, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment. Such order may be modified or vacated by the judge granting the same, or the court in which the action is brought, at any time, upon such terms as may be just.

721. **Disobedience of Orders—How Punished.** If any person, party, or witness disobey an order of the referee, properly made, in the proceedings before him under this chapter, he may be punished by the court or judge ordering the reference, for a contempt.

#### COLORADO

4340. **What May Be Attached.** The rights, shares and interest which the defendant may have in any corporation, joint stock company or partnership, together with the interests and profits thereon, as well as all debts



due the defendant from any person, shall be subject to be taken by virtue of the writ of attachment, and if judgment be recovered may be sold to satisfy the judgment and execution.

4341. **Debts, Credits, Etc.—How Attached.** The constable to whom the writ is delivered shall execute the same without delay, and if the deposit be not made or the undertaking given, as hereinbefore provided, then as follows:

Second: Debts, credits and other things in action which are not capable of manual delivery shall be attached by leaving with the person owing such debts, or having in his possession or under his control such credits, or with his agent, a copy of the writ of attachment, and a notice that the debts owing (by) him to the defendant, or the credits or other choses in action or personal property in his possession or control belonging to the defendant, are attached in pursuance of said writ. Every corporation (corporation) or other than municipal corporation, sheriff, constable or trustee shall be liable to be garnished under the provisions of this section.

Garnishee proceedings are entirely statutory, and unless the requirements of the statute are complied with the proceedings can not be sustained. *Rice v. American Nat. Bank*, 31 Pac. 1025.

An agent of defendant's debtor, through whom payment was to be made, can not be garnished.

*Voorthies v. Denver Hardware Co.*, 36 Pac. 65.

Proceedings in attachment and garnishment are purely statutory in derogation of the common law and in the nature of proceedings in rem, and the statute must be literally and specifically followed, and departure vitiates the proceedings and renders it void.

*Colorado Fuel & Iron Co. v. Blair*, 39 Pac. 597.

4344. **Notice to Garnishee—Liability.** Any person so served with notice, as provided in the preceding section, may deliver all moneys due the defendant, or personal property, or choses in action belonging to the defendant in his possession or under his control to the constable holding the attachment writ, whose receipt therefore shall be sufficient evidence of such delivery. If such delivery be not made, the person so garnished shall be liable to the plaintiff for the amount of all debts, property or other things in action for which he would otherwise be liable to the defendant until the attachment is dissolved or the judgment recovered in the action is fully satisfied.

This section limits the liability of a garnishee to debts, property or things in action for which he would otherwise be liable to the defendant. *Voorthies v. Denver Hardware Co.*, 36 Pac. 65.

4345. **Examination of Garnishee.** Every person so garnished shall be required to appear before the justice who issued the attachment writ, at a time and place to be mentioned in the garnishee summons, and be examined on oath touching his indebtedness to the defendant or the personal property or things in action, which he had at the time of service of such notice, or which may have come into his possession of, and belonging to, the defendant in the attachment. Upon such examination the justice may order the property or things in action, which belong to the defendant, that are in the custody or control of the garnishee, to be surrendered to the constable holding the writ of attachment upon such terms as may be just. If such property be not capable of delivery, then a memorandum of the same shall be delivered to the constable, to be by him indorsed on the attachment writ.

The creditor who seeks to obtain judgment must affirmatively establish the liability of the garnishee in order to justify a judgment against him. *Union Pac. Ry. v. Gibson*, 25 Pac. 300.

4346. **Constable's Duty—Statement of Garnishee.** The constable shall make a full and complete inventory of the property attached by him, and return the same to the justice who issued the attachment writ. To enable him to make such return as to things in action and debts due by the garnishee to the defendant, he shall, at the time of serving the writ of attachment and notice, provided for in section nine (9) of this act, request the party owing the debt, or holding possession of the things in action for the defendant in the attachment, to give him a written statement, under oath, of the amount of his indebtedness to the defendant in the attachment of the things in action belonging to him, which are in his possession or control. If such statement be refused the constable shall return the fact of such refusal with the writ.

4347. **Trial of Right to Property—Notice—Damages.** If any person other than the defendant in attachment claims to own or be entitled to the possession of the property attached, or any part of it, he may file his affidavit with the justice at any time before the trial of the action, setting forth his claim, and particularly setting forth what property he claims. Upon such affidavit being filed, the justice shall designate a time and place for the trial of the right of property, not more than five days from the date of filing of such affidavit. Notice in writing shall be given to the attaching creditor, and to the debtor, if such notice can be given, of the claim to be tried. In all cases where, upon trial of the issue thus made, the right of property is found to be in the claimant, the damages suffered by the claimant, by reason of the levy, shall be assessed by the court or jury, and the claimant shall recover his costs of the attaching creditor. If the judgment be in favor of the attaching creditor the latter shall recover his costs of the claimant.

**Summons to Garnishee—Trial.** If any garnishee shall have failed to deliver to the constable any property of the defendant in attachment when notified, as provided in section ten (10) of this act, or to give a memorandum, as required by section eleven (11), upon judgment being rendered in favor of plaintiff, it shall be the duty of the justice to issue a summons in the name of the plaintiff against such garnishee, requiring such garnishee to appear before him at a day and hour therein named. If he show cause why judgment should not be rendered in favor of the plaintiff and against the garnishee, as a garnishee of the defendant in the original action, for the amount of such judgment, or so much thereof as remains unsatisfied. If upon trial of the garnishment it appears that the garnishee is indebted to the judgment debtor in a debt payable in money, or have (has) in his possession things in action, or property belonging to the judgment debtor, the justice shall render judgment against such garnishee for the amount of such money or the value of such things in action or property in the possession of such garnishee; provided, such judgment shall not exceed the judgment and costs rendered against such judgment debtor. And if the garnishee fails to appear on the return day of such summons, or fails to pay over such money as he may have in his hands, or to deliver to the constable such property as the garnishee may have in his possession belonging to the defendant, judgment shall be rendered against the said garnishee for the full amount of the judgment against the said defendant and the costs of suit. An appeal shall lie to the county court from any order made by the justice under this section.

A garnishee may not waive the statutory requirements of service, etc., so as to bind the defendant.

*Henkle v. Bi-Metallic Bank*, 58 Pac. 336.

**Judgment—Summons of Garnishee—Form.** Whenever a judgment shall be rendered by any court of record, or any justice of the peace in this State, and execution against the defendant, or defendants, in said judg-

ment has been issued and delivered to the proper officer, and the officer, after diligent search, shall not be able to find property of the defendant, or defendants, in his county sufficient to satisfy the same, the officer shall, upon request of the plaintiff, his agent or attorney, summon such person, or persons, as the plaintiff may direct, as garnishees, to appear before the court or justice of the peace from which the execution issued; if before a court of record the summons shall be made returnable, and be served the same as other summons in courts of record; if before a justice of the peace the summons shall be made returnable within the same time, and served in the same manner as ordinary summons issued by justice of the peace. The summons may be in substance as follows, viz.:

A..... B.....  
 v. Plaintiff,  
 C..... D.....  
 Defendant.

THE PEOPLE OF THE STATE OF COLORADO:

To E..... F....., Garnishee:  
 You are hereby notified that you are attached as garnishee in the above entitled cause, and you are required not to pay any debt due, or to become due, from yourself to the said C..... D....., and that you must retain possession and control of all personal property, effects and choses in action, of the said C..... D....., in order that the same may be dealt with according to law. And you are hereby commanded to be, and appear, before (naming the court, or justice, as the case may be), at..... on the..... day of....., 18..... at..... o'clock.....m., to answer what may be objected against you in that behalf.

(Signed by Officer)

Dated.....  
**Provided**, judgments against garnishees may be enforced in the same manner as other judgments of court of law are, or hereafter may be enforced in this State.

4359. **Execution Need Not Be Returned.** It shall not be necessary that the officer shall have first returned his execution to the court or justice before serving the summons. The return of such summons to the court or justice, as the case may be, showing due service on the person or persons therein named as garnishees, shall be the commencement of proceedings against the said garnishees, and the court or justice shall examine and proceed against such garnishee, or garnishees, served with summons, as hereinafter provided.

4360. **Garnishees Answers to Officer.** Whenever any person shall be summoned as garnishee under any writ of attachment, or, as provided in section one (1) of this act, the plaintiff, his agent or attorney, may direct the officer, at the time of serving the process or thereafter, to take the answer of the garnishee, or whenever any person summoned as garnishee, as aforesaid, shall desire to exonerate himself from further liability or attendance at court he may do so (except as otherwise provided in this act) by making and subscribing an answer.

4361. **Answer of Garnishee.** In all cases mentioned in the preceding section the answer of the garnishee shall be under oath, in writing, and the officer serving the writ of attachment or garnishee summons shall administer the oath, take the answer, and append the same to the return of the process served, the interrogatories and oath may be in substance as follows:

1. Are you in any manner indebted to the defendant, C..... D....., either property or money, and is the same now due? If not due, when is the same to become due? State fully all particulars.

Answer.

2. Have you in your possession, in your charge, or under your control any property, effects, goods, chattels, rights, credits, or choses in action of said defendant, or in which he is interested? If so, state what is the value of the same, and state fully all particulars.

Answer.

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, effects, goods, chattels, rights, credits or choses in action belonging to him, or in which he is interested, and now in the possession or under the control of others? If so, state the particulars.

Signature of Garnishee.

I, (insert the name of garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed are true, so help me God.

Signature of Garnishee.

Subscribed and sworn to before me, this..... 18.....

Signature of Officer.

4362. **Garnishees Refusing to Answer—Summons.** If the garnishee refuses to answer fully and unequivocally all the foregoing interrogatories he shall be summoned by the officer and required to appear before the court or justice, as provided in section one (1) of this act, and to answer before the court or justice all the interrogatories prescribed in the preceding section, and such other questions as the court or justice may think proper or right.

4363. **Garnishee Pay to Officer—Receipt—Sale.** After the answer the garnishee may pay to the officer the amount of money he so confesses to be due and owing by him to the defendant, and to deliver to the officer the property and effects in his possession, charge, or under his control, and thereupon be relieved from attendance at court unless further summoned. In such case the officer shall receipt to the garnishee for the money and property received, and if the action be attachment he shall hold the same until the final determination of the suit, unless the same be of a perishable nature; if the proceeding be upon judgment, as provided in section one (1) of this act, the officer shall sell the property, giving the usual previous notice, as in other cases, and apply the proceeds of sale and moneys so received from the garnishee to the satisfaction of the execution in his hands against the defendant. Should there be any surplus money or property unsold in the hands of the officer after paying the cost of garnisheeing and satisfaction of the execution against the defendant, he shall pay and deliver the same to the defendant without delay.

4364. **Plaintiff Traverse Answer.** After answer of the garnishee in any case is made, either before the officer or in court, the plaintiff, his agent or attorney, may controvert the whole or any part of said answer, by filing in court, or before the justice, an affidavit traversing any of the facts set forth in such answer (such affidavit may be upon information and belief); thereupon a scire facias shall issue and be served upon such garnishee (unless he be already in court), requiring him to appear before the court or justice upon a day named therein. Issues so joined without further pleading shall be tried as other trials at law are con-

ducted, and if the finding of the court, or justice of the peace, or the verdict of the jury, shall be against the garnishee, judgment shall be given against him in the same manner as if the facts had been admitted by him, with the costs of such trial, and the moneys or property in the hands of the garnishee or officer shall be by the court applied to the payment of the plaintiff's judgment against the defendant. If the finding or verdict shall be in favor of the garnishee, he shall recover his costs against the plaintiff. And in case the garnishee admits indebtedness to the defendant he shall not be liable for costs.

Where the garnishee answers "not indebted," the court has no jurisdiction to enter judgment against him until a scire facias has been served upon him.

State Bank v. Harcourt, 88 Pac. 855.

**4365. Default of Garnishee—Scire Facias—Final Judgment.** If any garnishee, having refused to answer before the officer, or summoned to appear, as provided by the preceding sections, being duly served with process, as provided by this act, shall fail to appear at the time and place in the process fixed for his appearance, default may be taken against such garnishee, and a conditional judgment may be rendered against such garnishee for the full amount of the judgment rendered against the debtor in the original action and costs. Thereupon a scire facias may be issued out of the court where such proceeding is pending, commanding such garnishee to appear at said court of the return day of said writ, and to show cause why such judgment should not be made final and conclusive, which said scire facias shall, if issued out of the district or county court, be returnable in twenty days, and shall be served upon such garnishee at least ten days before the return day, and if issued out of justice court, shall be returnable in five days from its issuance, and shall be served upon the garnishee at least three days before the return day, and if such garnishee shall fail to appear at such court or before such justice on the return day of such scire facias, said conditional judgment shall be made final and conclusive.

A valid conditional judgment is a condition precedent to the issuance of a scire facias against a garnishee. In order to bind the creditor, whose claim is thus sought to be appropriated, it is essential that there be service of valid process, or its equivalent.

Rice v. American Nat. Bk., 31 Pac. 1025.

**4366. Goods Claimed by Third Person.** If it appears that any goods, chattels, choses in action, credits or effects in the hands of a garnishee are claimed by any other person, by force of an assignment from the defendant, or otherwise, the court or justice of the peace shall permit such claimant to appear and maintain his right. The court or justice may, in its discretion, adjourn the case not exceeding five days, for the purpose of giving the claimant such notice as it may direct.

**4367. Claimant May Be Made Party—Default.** If such claimant appears he may be admitted as a party to the suit, as far as respects his title to the property in question, and may allege and prove any facts not stated or denied by the garnishee, and such allegations shall be made, tried and determined in the manner hereinbefore provided. If such person shall fail to appear, after having been served with notice in the manner directed, he shall nevertheless be concluded by the judgment in regard to his claim.

**4368. Garnishee Having Set-off—Balance—Proviso.** Every garnishee shall be allowed to retain or deduct out of the property, effects or credits in his hands all demands against the plaintiff, and all demands against the defendant of which he could have availed himself if he had not been

summoned as garnishee, whether the same are at the time due or not, and whether by way of set-off on a trial, or by the set-off of judgments or executions between himself and the plaintiff and defendant severally, and he shall be liable for the balance only after all mutual demands between himself and plaintiff and defendant are adjusted, not including unliquidated damages for wrongs and injuries; provided, that the verdict or finding, as well as the record of the judgment, shall show in all cases against which party, and the amount thereof, any set-off shall be allowed, if any such shall be allowed.

**4370. Effect of Judgment Against Garnishee.** The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects and credits paid, delivered or accounted for by the garnishee by force of such judgment.

**4371. Discharge of Garnishee No Bar to Suit.** If the person summoned as garnishee is discharged the judgment shall be no bar to an action brought against him by the defendant for the same demand.

**4372. Execution Stayed Till Debt Falls Due.** When judgment is rendered against any garnishee and it shall appear that the debt from him to the defendant is not yet due, execution shall not issue until the debt shall have become due.

**4373. Garnishee Shall Deliver Goods—Officer Hold and Sell.** When any garnishee has any goods, chattels, choses in action, or effects other than money belonging to the defendant, or which he is bound to deliver to him, he shall deliver the same or so much thereof as may be necessary to the officer, who shall hold the execution in favor of the plaintiff in the attachment suit or judgment, which shall be sold by the officer, and the proceeds applied and accounted for in the same manner as other goods and chattels taken on execution.

**4377. Garnishee Refusing Delivery—May Be Attached.** If any garnishee refuses or neglects to deliver any goods, chattels, choses in action or effects in his hands, when thereto lawfully required by the court or justice of the peace or officer having an execution upon which the same may be received, he shall, if the proceeding be in a court of record, be liable to be attached, and punished for contempt, or the court may enter upon judgment for the amount of the plaintiff's judgment and costs, and award execution thereon against the garnishee, or, if the proceedings be before a justice of the peace, be liable to the plaintiff for the full amount of his judgment and costs against the defendant, and judgment may be entered against him therefor.

**4378. Costs, How Paid—Fees of Garnishee.** The court or justice of the peace may order the costs of the proceedings in any garnishment to be paid by the plaintiff, or out of the effects or credits garnished, or by the garnishee, or may apportion the same as shall appear to be just and equitable. The garnishee shall be entitled to fees when he does not resist or make costs when judgment is rendered against him, the same as witnesses before the same courts in civil cases.

**4382. Garnishee Summons May Be Amended.** No proceedings against a garnishee or garnishees shall be quashed, or set aside, or said garnishee or garnishees discharged on account of any insufficiency of the original affidavit, or summons, if the plaintiff or plaintiffs, or other credible person for him shall cause a legal and sufficient affidavit to be filed, or the summons to be amended in such time and manner as the court or justice of the peace shall, respectively, in their discretion, direct, and in that event the cause shall proceed as if such proceedings had originally been sufficient.

## HAWAII

## Garnishment—At Commencement of Action

2114. **Process.** Whenever the goods or effects of a debtor are concealed in the hands of his attorney, agent, factor, or trustees, so that they can not be found to be attached or levied upon, any creditor may bring his action against such debtor, and in his petition for process may request the court to insert therein a direction to the officer serving the same to leave a true and attested copy thereof to the officer serving the same or trustee, or at the place of his or their usual place of abode, and to summon such attorney, agent, factor or trustee to appear personally upon said cause, and then and there on oath to disclose whether he has, or at the time said copy was served, had any of the goods or effects of the same, or is indebted to him, and the nature and amount of such debt, which summons and direction shall be signed and issued in the same manner as summonses are usually issued in civil actions, and shall be served by the officer according to such direction, and shall be leaving such copy all the goods and effects in the hands of such attorney, agent, factor or trustee, and every debt due from such debtor to the defendant shall be secured in his hands to pay such judgment as the plaintiff agent, factor or trustee, and such notice shall be sufficient notice to the defendant to enable the plaintiff to bring his action or trial, unless the defendant be an inhabitant of this Territory, or has sometimes resided left at his last and usual place of abode.

Ashford v. Titcomb, 6 Haw. 489.

As to service upon corporation:  
Lishman v. Giles, 6 Haw. 259.

Petition must be in writing and contain a specific request for garnishee process.

Frag v. Adams, 5 Haw. 664.

As to service on attorney in fact of garnishee:  
Hackfeld v. Kavanagh, 6 Haw. 659;

Everett v. Bolles, 6 Haw. 153;

Kerr v. Mayhew, 7 Haw. 72;

Bryne v. Allen, 10 Haw. 325.

Money in hands of the clerk of the court still subject to judicial action is not subject to garnishment.

Lai Say v. Kaahau, 10 Haw. 499.

Debt subject to a contingency, and not due or to become due by the mere lapse of time, is not subject.

Souza v. Smith, 11 Haw. 202.

As to when a trustee, under private trust, may be held as a garnishee.  
Peterson v. Titcomb, 11 Haw. 466.

A debt owing a partnership can not be garnished in an action against one of the partners.

Ming Hyan v. Yong Tong, 11 Haw. 300;

Everett v. Bolles, 6 Haw. 153;

Bishop v. Everett, 6 Haw. 157.

As to service of defective copy on garnishee:  
Havashli v. Iwata, 14 H. 427.

Garnishee may appear and make his disclosure orally at trial or any time before trial and need not file written answer.

Bank of Hawaii v. Park, 15 Haw. 645.

2115. **Garnishee—Rights, Duties.** Such attorney, agent, factor or trustee, upon his desire, shall be admitted to defend his principal in such suit, and if judgment be rendered in favor of the plaintiff all the goods and effects in the hands of such attorney, agent, factor or trustee, and the debt due from such debtor or such part thereof as may be sufficient for that purpose shall be liable to pay the same, and the plaintiff on praying out execution may direct the officer serving the same to make demand of such attorney, agent, factor or trustee of the goods and effects of the defendant in his hands, whose duty it will be to expose the same to be taken on the execution, and also to make demand of such debtor for any debt, or such part thereof as may satisfy said judgment as may be due to the defendant, and it shall be the duty of said debtor to pay the same, and if such attorney, agent, factor or trustee shall have in any manner disposed of the goods and effects of his principal, which were in his hands when the copy of the writ was left with him, and shall not expose and subject them to be taken on execution, or if such debtor shall not pay to the officer, when demanded, the debt due to the defendant at the time the copy of the writ was left with him, such attorney, agent, factor or trustee, or debtor, shall be liable to satisfy such judgment out of his own estate, as his proper debt, if the goods or effects be of sufficient value or amount, if not, then to the value of such goods or effects, or to the amount of such debt.

Hackfeld v. Lee Loy, 4 Haw. 489;

Ashford v. Titcomb, 6 Haw. 489.

As to where garnishee was held to defend for principal:

Bryne v. Allen, 10 Haw. 327.

Debt owing by third party to defendant, which did not accrue until after service on the garnishee, can not be held.

Phillips & Co. v. Lun Chong Co., 14 Haw. 295, 9.

2116. **Execution—When.** If the said attorney, agent, factor or trustee, or debtor, fails to appear upon the day and hour of hearing named in the summons or writ above mentioned, or if, having appeared, he refuses to disclose upon oath whether he has goods or effects of the defendant in his hands, and their nature and value, or whether a debt is due from him to the debtor, and its amount, the case shall proceed to trial, and if the plaintiff recovers a judgment, execution shall issue at his request against the estate of such contumacious attorney, agent, factor or trustee, or debtor, for the amount of such judgment as his own proper debt and the lawful costs; provided, that if it appears on the trial that the goods and effects are of less value and the debt of less amount than the judgment recovered against the debtor, judgment shall be rendered against the garnishee to the value of the goods or the amount of the debt, and if it appears that the garnishee has no goods or effects of such debtor in his hands, or is not indebted to him, then he shall recover his lawful costs. But if he appears and on oath discloses fully whether he has in his hands the goods or effects of, or is indebted to the defendant, and it appears to the court that he has no such goods or effects, or is not so indebted, then judgment shall be given for him, and he shall recover his lawful costs.

Bank of Hawaii v. Park, 15 Haw. 645.

## After Judgment

2117. **Examination of Judgment Debtor.** It shall be lawful for any creditor, who has obtained a judgment in any court, to apply to the court or a judge thereof for a rule, order or summons, that the judgment debtor shall be orally examined before a judge of such court, or such other person as such court or judge, if of a court of record shall appoint, as to any and what debts are owing to him, and the court or judge may

make such rule or order for the examination of such judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of oral examination of witnesses under the law in that case made and provided.

**2118. Attachment of Debts—Order.** It shall be lawful for a judge of any court, upon the ex parte application of such judgment creditor, either before or after such oral examination and upon affidavit by the judgment creditor, or his attorney, stating that judgment has been recovered and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment debtor, and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment debtor, shall be attached to answer the judgment debt, and by the same or any subsequent order it may be ordered that the garnishee shall appear before the judge to show cause why he should not pay the judgment creditor the debt due from him to the judgment debtor or so much thereof as may be sufficient to pay the judgment debt; provided, that the judge may, in his discretion, refuse to interfere from the smallness of the amount to be recovered, or of the debt sought to be attached, or otherwise, the remedy sought would be worthless or vexatious.

Only debts owing by garnishee to defendant may be garnished.  
Lee Ah Sue v. Chu Kee, 6 Haw. 623.

**2119. Effect of Order.** Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the judge shall direct, shall bind such debts in his hands.

**2120. Execution—When.** If the garnishee does not forthwith pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, the court may order execution to issue, and it may be sued forth accordingly without any previous writ or process to levy the amount due from such garnishee towards satisfaction of the judgment debt.

**2121. Order to Show Cause—When.** If the garnishee disputes his liability, the judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee by writ calling upon him to show cause why there should not be an execution against him for the alleged debt and for costs of suit, and the proceedings upon such suit shall be the same as nearly as may be as upon a writ of revivor. Whenever it is suggested by the garnishee that the debt sought to be attached belongs to some third person, who has a lien or charge upon it, the judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the judge may think fit to call before him, or in case of such third person not appearing before him upon such summons, the judge may order execution to issue to levy the amount due from such garnishee, or the judgment creditor to proceed against the garnishee as in this chapter provided, and he may bar the claim of such third person or make such other order as he shall think fit, upon such terms in all cases with respect to the lien or charge (if any) of such third person, and to costs as he shall think just and reasonable.

### Garnishee May Be Heard at Once

**2122. On Notice to Plaintiff.** Whenever any person summoned as an attorney, agent, factor or debtor of any defendant may be desirous of so doing, he may apply to the magistrate or any judge of the court from whom or which the said summons may have issued, and the magistrate or judge having caused reasonable notice to be given to the plaintiff in the action shall proceed to take the deposition of the person thus summoned, and make such order as may be proper in the premises, at any time previous to the day appointed for hearing the cause, and the person summoned as agent, factor, trustee or debtor of the party defendant shall be taken to have obeyed the summons.

Ashford v. Titcomb, 6 Haw. 489;  
Phillips v. Co., 14 Haw. 235, 9;  
Bank of Hawaii v. Park, 15 Haw. 645.

**2123. Debts Payable in Future.** If upon disclosure made on oath by such debtor it appears that such garnishee is indebted to the defendant, but that such debt is not payable and will not become due until some future time, then such judgment as the plaintiff may recover shall constitute a lien upon such debt until and at the time it shall become due and payable.

Lay Say v. Kaaahu, 10 Haw. 499, 504.

**2124. Section "L" to Appear on Summons.** Section 2122 shall be printed or written conspicuously on every summons issuing out of any court of the Territory, which may be intended to be served on any alleged attorney, factor, trustee or debtor of a defendant in any suit.

Grag v. Adams, 5 Haw. 664.

### Miscellaneous

**2125. Payment by Garnishee—Effect.** The taking of any goods or effects of any debtor, or the payment of any debt due him as aforesaid, or payment made by, or execution levied upon the garnishee upon any such proceeding, as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding may be set aside or the judgment may be reversed.

**2126.** Every such attorney, agent, factor or trustee shall be paid his traveling fees and expenses for his attendance before any court under the provisions of this chapter, on the same scale and at the same rate as witnesses required by subpoena to attend on the trial of any civil suit in said courts. (\$191.—\$1.00 per day; \$10 per mile.)

**2127. Law Applicable to All Courts.** The provisions of this chapter and the powers conferred therein shall extend to all the common law courts of this Territory, according to their jurisdiction.

Frag v. Adams, 5/664.

### IDAHO

Sec. 4302. The plaintiff at the time, of the issuing of summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment as in this chapter provided in the following cases:

1. In an action upon a judgment, or upon contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

2. In an action upon a judgment, or upon contract, express or implied, or for the collection of any penalty provided by any statute of this State against a defendant not residing in this State.

Sec. 4303. The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of plaintiff setting forth:

1. That the defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims) and whether upon a judgment or upon a contract for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or if originally secured, that such security has, without any act of the plaintiff or the person to whom the security was given, become valueless.

2. When the defendant is a non-resident of this State, that such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal set-offs or counter-claims), and that defendant is a non-resident of the State.

3. That the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant.

Approved March 4, 1913.

4304. Before issuing the writ the clerk must require a written undertaking on the part of the plaintiff, in a sum not less than two hundred dollars, and not exceeding the amount claimed by the plaintiff, with sufficient sureties, to the effect that, if the defendant recover judgment, or if the attachment be wrongfully issued, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking, and two days after issuing such writ and delivering it to the proper officer the clerk must post at the front door of the court house, and cause to be published in some newspaper published in the county, if there be one, a notice, setting out the title of the cause and the fact that an attachment has been issued against the property of the defendant. Such notice shall be kept posted at least ten days and shall be published, if in a weekly paper, in three issues thereof, and if any other than a weekly paper in at least six issues. Any creditor of the defendant who, within sixty days after the first posting and publication of such notice, shall commence and prosecute to final judgment his action for his claim against the defendant, shall share pro rata with the attaching creditor in the proceeds of defendant's property, where there is not sufficient to pay all judgments in full against him.

California Legis.: Same as to undertaking, no requirement of notice; C. C. P. 1872, Sec. 539; Deering's Code, lb.; Kerr's Code, lb.

4305. The writ must be directed to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant, within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property, which has been or is about to be attached, in which case, to take such undertaking. Several writs may be issued at the same time to the sheriff of different counties, and the plaintiff may have other writs of attachment as often as he may require at any time before judgment.

Cal. Legis.: Same except last clause, beginning "and the plaintiff" is omitted: C. C. P. 1872, Sec. 540; Deering's Code, lb.; Kerr's Code, lb.

Sec. 4306. The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profit thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

Cal. Legis.: Same; C. C. P. 1872, Sec. 441; Deering's Code, lb.; Kerr's Code, lb.

Sec. 4307. Sub. 5. Debts and credits and other personal property not capable of manual delivery must be attached by leaving with the person owing such debts, or having in his possession or under his control such credits or other personal property, or with his agent, a copy of the writ, and a notice that the debts owing by him to the defendant, or the credits or other personal property in his possession or under his control, belonging to the defendants, are attached in pursuance of such writ.

Approved March 7, 1911.

Sec. 4308. Upon receiving information in writing from the plaintiff, or his attorney, that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ.

Cal. Legis.: Same; C. C. P. 1872, Sec. 543; Deering's Code, lb.; Kerr's Code, lb.

Cited: Van Ness v. McLeod (1892) 3 Ida. 439; 31 Pac. 798.

Sec. 4309. **Liability of Garnishee.** All persons having in their possession or under their control any credits or other personal property belonging to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Cal. Legis.: Same except for the words "or owing any debts to the defendant" are inserted after "defendant;" C. C.

P. 1872, Sec. 544; Deering's Code, lb.; Kerr's Code, lb.

Cited: Lindenthal v. Burke (1889) 2 Ida. 571; 21 Pac. 419;

Simpson v. Remington (1899) 6 Ida. 681; 59 Pac. 360.

**Liability of Garnishee.** The garnishee is liable to the attaching creditor to the amount of his indebtedness to the defendant in the attachment suit, and if sued by such defendant may procure a suspension of proceedings until his liability to the attaching creditor is determined by motion based on affidavit setting up the garnishment.

Van Ness v. McLeod (1892) 3 Ida. 439; 31 Pac. 798.

Sec. 4310. **Examination of Garnishee.** Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or a referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property and may be examined on oath. The court or judge may, after such examination, order personal property capable of manual delivery to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property containing the amount and description thereof.

Cal. Legis.: Same; C. C. P. 1872, Sec. 545; Deering's Code, lb.; Kerr's Code, lb.

**Proceedings Against Garnishee.** While the court may direct the garnishee to submit to an examination with respect to the indebtedness claimed, and may, by proper order, authorize the plaintiff to commence an action against the garnishee, and restrain him, pending the action, from transferring or disposing of his interest in the debt in case he denies the indebtedness, it can not direct the entry of judgment against the garnishee without allowing him a hearing upon the issue so raised.

Lindenthal v. Burke (1899) 2 Ida. 571; 21 Pac. 419.

**Sec. 4310a. Notice of Garnishment—Discharge of Garnishee.** Any person who has been served with a copy of the writ and notice, as provided in Sections 4307, 4308, 4309, 4477, 4688, 4689 or 4744, shall be deemed a garnishee and service of copy of writ and the notice therein provided for, shall, for the purpose of this article, be deemed to be notice of garnishment, and whenever any person shall have been served with notice of garnishment, as herein defined, he may discharge himself by paying or delivering to the officer all debts owing by him to the defendant, or a portion thereof, sufficient to discharge the claim of the plaintiff, or any or all money of the defendant in his hands to a similar amount, taking a receipt therefor from the officer, which shall discharge such person from any and all liability to the extent of such payment, and which shall be held by the officer subject to the orders of the court out of which the writ issued.

**Sec. 4310b. Interrogatories Submitted to Garnishee.** Written interrogatories, which may be in the following form, may be delivered to the garnishee at the time of serving notice of garnishment:

First: At the time of the service of the garnishment, had you in your possession, or under your control, any property, money or effects of the defendant? If so, state what property, how much, and of what value, and what money or effects?

Second: At the time of the service of the garnishment, did you owe the defendant any money, or do you owe him any money? If so, state how much, on what account, and when did it become due? If not due, when will it become due?

To these may be added any other proper and pertinent questions, the answers to which might tend to show a liability on the part of the garnishee to the defendant.

**Sec. 4310c. Answer to Interrogatories—Judgment Against Garnishee.** Upon a copy of the interrogatories being served upon him, the garnishee shall make full and true answer to the same, under oath, and filed in the cause within five days thereafter. If he fails to do so the plaintiff may take judgment against him by default, or the court may, upon motion, compel him to answer by attachment. But no final judgment shall be rendered against the garnishee until there shall be a final judgment against the defendant, nor shall judgment be rendered for a greater amount than the debt claimed by the plaintiff, with interest and costs, nor for a greater amount than the garnishee shall appear to be liable for to the defendant, nor shall execution issue against a garnishee until the maturity of his debt to the defendant.

**Sec. 4310d. Exception to Answer—Amendment.** The plaintiff may except to the answer of the garnishee for insufficiency, and if adjudged insufficient the court may allow him to amend it in such time and on such terms as shall be just.

**Sec. 4310e. Denial of Answer.** The plaintiff may deny the answer of the garnishee, in whole or in part, without oath, and allege specially the grounds upon which a recovery is sought against the garnishee, to which the garnishee may reply either generally or specifically, and the issue presented by such denial and reply shall be tried as ordinary issues between

plaintiff and defendant, and judgment rendered thereon and execution issued accordingly, except as herein otherwise provided.

**Sec. 4310f. Judgment on Answer—Costs and Allowances.** If the answer of the garnishee be not excepted to, or denied within three days after its filing, unless the court, or judge in vacation, for good cause shown, gives longer time, it shall be taken to be true and sufficient, and if in such case any indebtedness or liability is admitted, judgment shall be rendered accordingly, and the garnishee shall be allowed a reasonable sum out of the funds or property confessed in his hands for his trouble and expense in answering. If all liability is denied, and the denial is uncontroverted, the garnishee shall be discharged at the cost of the plaintiff. In contested cases the costs shall be adjudged as in ordinary cases between plaintiff and defendant.

**Sec. 4310g. Judgment Against Garnishee.** If the garnishee admits in his answer that he is indebted to the defendant, or has money or property of the defendant in his hands, or under his control, and fails or refuses to turn the same over to the officer as in Section 4310a is provided, the plaintiff may move the court out of which the writ issued, on or before the return day thereof, for judgment against the garnishee for the amount of such admitted debt, or for the delivery to the officer of the money or property of the defendant in his hands, to an amount sufficient to satisfy the plaintiff's claim, serving the garnishee with due notice of the said motion, and at the hearing thereof the court shall render such judgment as shall be conformable to law and the facts shown to exist.

**Sec. 4310h. Allegation of Assignment of Debt—Procedure.** If the garnishee shall allege in his answer that he is indebted to the defendant, but declare his belief, under oath, that the debt has been assigned to some other person (naming him) and the plaintiff shall file a reply denying the fact, or the force and validity of the alleged assignment, the court shall thereupon make an order requiring the alleged assignee to appear, on a day to be therein named, and show cause why the alleged assignment should not be disregarded. Such order shall be served upon the supposed assignee, if within the jurisdiction of the court, at least fifteen days before the return day thereof. But, if he can not be found, or is out of the jurisdiction of the court, he may be brought in by publication as in other civil cases; provided, that the order shall be published instead of the summons, and that such publication need only be made for three weeks successively, and that the last insertion thereof need not be more than fifteen days before the return day thereof.

**Sec. 4310i. Same—Trial of Issue.** Upon the return day of the order of notice, or upon such other day to which the trial may be postponed, if the alleged assignee fails to appear, or appearing fails to assert any claim as such assignee, the alleged assignment shall be disregarded, but if he shall appear and set up a claim as assignee, the existence, force and validity of the alleged assignment shall be tried as similar issues between plaintiff and defendant, and such judgment shall be rendered as shall be conformable to the facts and the law.

**Sec. 4310j. Claim of Exemption by Defendant.** The defendant in the main action may, by proper pleading filed in the garnishment proceedings, set up any facts showing that the debt or the property with which it is sought to charge the garnishee is exempt from execution, or for any other reason is not liable for the plaintiff's claim, and if issue thereon be joined by the plaintiff it shall be tried with the issues as to the garnishee's liability, and if the property, or debt, or any part thereof, is found to be thus exempt or not liable, judgment shall be rendered accordingly.

Sec. 4310k. **Liability of Garnishee on Negotiable Paper.** The garnishee shall not be held liable on any debt due upon negotiable paper unless such paper is delivered up to him, or he is fully exonerated or indemnified against any liability thereon after he may have satisfied the judgment. But if it shall be made to appear to the satisfaction of the court in which the proceedings are pending that the paper is in the possession or control of the defendant, he may be compelled to produce it by attachment.

Sec. 4310l. **Liability of Officers and Executors to Garnishment.** No sheriff, constable, or other officer charged with the collection of money shall, prior to the return day of the execution upon which the same may be made, be liable to be summoned as a garnishee, nor shall any county collector or municipal corporation, or any officer thereof, nor administrator or executor of any estate, prior to the allowance of a demand found to be due by his estate, or prior to an order of distribution or for the payment of debts and legacies, be liable in their official capacities as garnishee.

Sec. 4310m. **Appeals in Garnishment Proceedings.** Appeals may be taken, heard and determined in cases arising under this article in the same manner and with like effect as is now, or may hereafter be, provided by law for appeals in ordinary civil actions.

Sec. 4310n. **Application of Preceding Sections.** The provisions of Sections 4310 to 4310m, inclusive, shall apply to all courts of competent jurisdiction.

Sec. 4311. **Inventory and Memorandum of Attached Property.** The sheriff must make a full inventory of the property attached, and return the same with the writ. To enable him to make such return as to the debts and credits attached, he must request, at the time of service, the party owing the debt or having the credit to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he must return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the cost of any proceedings taken for the purpose of obtaining information respecting the amounts and description of such debt or credit.

#### MONTANA

6656. (890). **When Attachment May Issue.** The plaintiff, at the time of issuing the summons, or at any time afterwards, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant give security to pay such judgment, as in this chapter provided, as follows:

In an action upon a contract, express or implied, for the direct payment of money, where the contract is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or, if originally secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless.

Sharman v. Huot, 20 Mont. 555; 52 Pac. 559.

A writ of attachment, issued before a valid summons, is absolutely void.

Burke v. Inter-State Assn., 25 Mont. 329; 64 Pac. 884;

Brophy v. Downey, 26 Mont. 254; 67 Pac. 313;

A. O. H. V. Sparrow, 29 Mont. 132; 74 Pac. 158;

Mueller v. Renkes, 31 Mont. 105; 77 Pac. 514.

An action against sureties on a bond conditioned to be void if the principal performed his contract is not an action on a contract for the "direct payment" of money.

6657. (891). **Affidavit—What to Contain.** The clerk of the court must issue the writ of attachment upon receiving an affidavit by or on behalf of the plaintiff, showing:

1. That such defendant is indebted to the plaintiff (specifying the amount of such indebtedness over and above all legal counter-claims) upon contract, express or implied, for the direct payment of money, and that the payment of the same has not been secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless; and,

2. That the attachment is not sought, and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant.

Brophy v. Downey, 26 Mont. 254; 67 Pac. 313;

Mueller v. Renkes, 31 Mont. 105; 77 Pac. 514.

6658. **Attachments Prior to Maturity of Debt.** Actions may be commenced and writs of attachments issued upon any debt for the payment of money or specific property, before the same shall have become due, when it shall appear by the affidavit in addition to what is required in Section 6657 (891), Chapter IV, Title VII, Part II, of the Code of Civil Procedure:

First: That the defendant is leaving, or is about to leave this State, taking with him property, moneys, or other effects, which might be subjected to the payment of the debt, for the purpose of defrauding his creditors; or,

Second: That the defendant is disposing of his property, or is about to dispose of his property, subject to execution, for the purpose of defrauding his creditors;

**Provided**, that any judgment obtained under the provisions of this section shall be with a rebate of the interest from the time said judgment is rendered until the time at which said debt shall have become due; and,

**Provided, also**, that the defendant may, by a plea, put in issue the matter alleged in the affidavit herein required, and if the plaintiff fails to substantiate some one of the causes required to be alleged in said affidavit, the suit for debt or debts not due shall abate. (Act approved March 3, 1899). (Sixth Sess. 141-142).

6659. (892). **Undertaking.** Before issuing the writ the clerk must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars or under, or in case the amount so claimed by plaintiff shall exceed one thousand dollars, then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of ten thousand dollars. The condition of such undertaking shall be to the effect that if the defendant recovers judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. Within five days after service of the summons in the action the defendant may except to the sufficiency of the sureties. If he fails to do so he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two days, nor more than five days, must justify before a judge of the District Court, or before the clerk thereof, and upon failure to justify, or if



others in their place fall to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment. "Plymouth Co. v. U. S. Fidelity Co., 35 Mont. 28; 88 Pac. 567. Attorney's fees, paid or agreed to be paid for services rendered in having an attachment dissolved, fall within the purview of this section. The liability of the sureties on an undertaking on attachment is fixed by the terms and conditions of the contract and can not be extended by implication to matters not fairly covered by them. Such sureties can not be held accountable for the malicious motives of plaintiffs in invoking the process of attachment."

6660. **Writ—To Whom Directed and What to Contain.** The writ must be directed to the sheriff of any county in which property of such defendant may be, and must require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant gives him security by the undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demands, besides costs, or in an amount equal to the value of the property, which has been, or is about to be, attached, in which case to take such undertaking; such undertaking is to be to the plaintiff or plaintiffs in the action, and shall be approved in writing on the back thereof by the plaintiff or plaintiffs, or his or their attorney or attorneys, or upon their refusal by the judge of the District Court of the same county as the residence of the sheriff; the sheriff shall thereupon file said undertaking with the clerk of the District Court out of which said writ of attachment emanates, and such sheriff shall thereupon cease to be liable under said writ, and any and all action on such undertaking shall be against the obligors named in such undertaking. Several writs may be issued at the same time to the sheriffs of different counties. In no case shall the sheriff attach more property than appears necessary to satisfy the plaintiff's demand. (Act approved March 7, 1899, 1). (Sixth Sess. 140-141).

Cheney v. Caldwell, 20 Mont. 77; 49 Pac. 398.

Authority is given to an officer to attach or levy on property not exempt. When exempt personal property is mortgaged; it is still exempt as to all except the mortgagee.

Wilson v. Barbour, 21 Mont. 181; 53 Pac. 317.

The clerk is required to insert in the writ the amount of the plaintiff's demand or demands, in conformity with that cause of action, or those causes of action, set out in the complaint, on which, as shown by the affidavit, plaintiff is entitled to attach. When the writ so states the amounts, the ministerial duty of the clerk is performed.

6661. (894). **Shares of Stock and Debts Due Defendant—How Attached and Disposed of.** The rights or shares which the defendant may have in the stock of any corporation or company, together with the interest and profits thereon, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered be sold to satisfy the judgment and execution.

6662. **Levy of Writ.** The sheriff to whom the writ is directed and delivered must execute the same without delay, and if the undertaking mentioned in Section 6660 (895) be not given, as follows:

1. Real property standing upon the records of the county in name of the defendant must be attached by filing with the county clerk a copy of the writ, together with the description of the property attached, and a notice that is attached.

2. Real property, or an interest therein, belonging to the defendant and held by any other person, or standing on the records of the county in the name of any other person must be attached by filing with the county clerk a copy of the writ, together with a description of the property, and a notice that such real property and any interest of the defendant therein held by, or standing in, the name of such other person (naming him) are attached. The county clerk must index such attachment when filed, in the names of both of the defendant and of the person by whom the property is held, or in whose name it stands on the record.

3. Personal property, capable of manual delivery, must be attached by taking it into custody, except in cases in which personal property capable of manual delivery is in the possession of a third person, and no such personal property so in the possession of a third person may be attached in the same manner as debts or credits and other personal property not capable of manual delivery as hereinafter provided.

4. Stocks or shares, or interest in stocks or shares of any corporation or company, must be attached by leaving with the president or other head of the same, or the secretary, cashier, or other managing agent thereof, a copy of the writ, and a notice stating that the stock or interest of the stock or interest of the defendant is attached in pursuance of such writ.

5. Debts or credits and personal property not capable of manual delivery, and personal property in the possession of a third person, must be attached by leaving with the person owing such debt, or having in his possession or under his control such credits and personal property, or with his agent a copy of the writ and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession, or under his control belonging to the defendant, are attached in pursuance of such writ. (Act approved March 7, 1899). (Sixth Sess. 139-140).

6663. (896). **Certificate of Defendant's Interest to Be Furnished.** Upon the application of a sheriff, holding a writ of attachment, the president or other head of an association or corporation, or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying his right to a number of shares of the defendant, in the stock of the association or corporation, with all dividends declared, or incumbrances thereon, or the amount, nature and description of the property held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires.

6664. (897). **Persons Refusing Certificates to Be Examined.** If a person to whom application is made, as prescribed in the last section, refuses to give such certificate, or if it is made to appear, by affidavit, to the satisfaction of the court, or judge thereof, that there is reason to suspect that a certificate given by him is untrue, or that it failed fully to set forth the facts required to be shown thereby, the court or judge may make an order, directing him to attend at a specified time, and at a place within the county to which the writ is issued, and submit to an examination under oath concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named herein.

6665. (898). **Sheriff to Take Into His Possession Books, Etc.** The sheriff must take into his custody all books of account, vouchers, and other papers, relating to the personal property attached, and all evidences

of the defendant's title to the real property attached, which he must safely keep. The sheriff to whom the writ of attachment is delivered may levy from time to time, and as often as is necessary, until the amount for which it was issued has been secured.

666. (899). **Attorney to Give Written Instructions.** Upon receiving information in writing from the plaintiff or his attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and a notice that such credit or other property, or debts, as the case may be, are attached in pursuance of said writ.

667. (900). **Garnishment—When Garnishee Liable to Plaintiff.** All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, shall be, unless such property be delivered up or transferred, or such debts be paid to the sheriff, liable to the plaintiff for the amount of such credits, property, or debts, until the attachment be discharged or any judgment recovered by him be satisfied.

Cowell v. May, 26 Mont. 168; 66 Pac. 845.

To charge a garnishee, there must be at the time of the service a debt due or to become due, and not a contingent liability or a conditional contract.

Clyne v. Easton Co., 148 Cal. 296; 83 Pac. 36.

668. (901). **Citation to Garnishee.** Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the court or judge, or referee appointed by the court or judge, and be examined on oath respecting the same. The defendant may also be required to attend, for the purpose of giving information respecting his property, and may be examined on oath. The court or judge may, after such examination, order personal property, capable of delivery in the hands or under the control of such person or of the defendant, to be delivered to the sheriff on such terms as may be just, having reference to any liens thereon or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof.

669. (902). **Inventory—How Made.** The sheriff must make a full inventory of the property attached, and return the same with the writ. When the sheriff has levied several writs of attachment on the same property only one inventory must be made. To enable him to make such return as to debts and credits attached, he must request, at the time of service, the person owing the debt or having the credit, to give him the memorandum stating the amount and description of each; and if such memorandum be refused the sheriff may apply upon one day's notice to the court or judge for an order to compel such memorandum to be given. If the order be granted it shall also direct the payment of costs of the motion by the person refusing.

670. (903). **Perishable Property—How Sold.** If any of the property attached be perishable, the sheriff must sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him must be retained by him to answer any judgment that may be recovered in the action, unless sooner subjected to execution upon another judgment, recovered previous to the issuing of the attachment. Debts and credits attached may be collected by him if the same

can be done without suit. The sheriff's receipt is a sufficient discharge for the amount paid.

Cowell v. May, 26 Mont. 168; 66 Pac. 845;

Michener v. Fransham, 33 Mont. 112; 81 Pac. 954.

On the dismissal of an attachment the sheriff is bound to account to the successful defendant for moneys collected under the attachment from such defendant's debtor.

Witherspoon v. Cross, 135 Cal. 98; 67 Pac. 18.

6671. (904). **Property Attached May Be Sold as Under Execution.** Whenever property has been taken by an officer under writ of attachment, and it is made to appear satisfactory to the court or a judge thereof that the interest of the parties to the action will be subverted by a sale thereof, the court or judge may order such property to be sold in the manner as property is sold under an execution, and the proceeds to be deposited in the court to abide the judgment in the action.

Witherspoon v. Cross, 135 Cal. 99; 67 Pac. 18.

6672. (905). **Application for Order to Sell.** Application for the order shall be upon such notice to the adverse party or his attorney as the court or judge considering the nature and condition of the property may direct. If it shall appear to the court or judge that the delay necessary to give notice would cause a material depreciation in the value of property, the order may be made without notice.

6673. (906). **Property claimed by Third Persons.** If personal property attached be claimed by a third person, he shall give notice thereof to the sheriff, and deliver to him an affidavit, stating his claim, ownership, and a description of the property, and unless the plaintiff, within ten days after receiving notice thereof, give the sheriff a good and sufficient bond to indemnify him against loss or damage by reason of retaining said property, the sheriff shall deliver the same to such person.

O'Brien v. Quinn, 35 Mont. 446; 90 Pac. 167.

The answer in an action against a sheriff for damages for the illegal seizure of saloon fixtures and stock in trade denied the claim of ownership by plaintiff. It was not necessary for plaintiff to make a third party claim as a condition precedent to maintaining his action.

6674. (907). **Death Does Not Dissolve Attachment.** The death of the defendant does not release the attached property and a lien of the attachment may be enforced as in the case of other liens.

6675. (908). **If Plaintiff Obtains Judgment—How Satisfied.** If judgment be recovered by plaintiff, the sheriff must satisfy the same out of the property attached by him which has not been delivered to the defendant or claimant as heretofore provided, or subjected to execution on another judgment, recovered previous to the issuing of the attachment, if it be sufficient for that purpose.

First: By paying to the plaintiff the proceeds of all sales of perishable property, or property ordered by the court or judge to be sold by him, or of any debts or credits collected by him or so much thereof as shall be necessary to satisfy the judgment.

Second: If any balance remain due, and an execution shall have been issued on the judgment, he must sell under the execution so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in his hands. Notices of the sales must be given, and the sales conducted as in other cases of sales on execution.

6676. (909). **Where There Remains a Balance Due—How Collected.** If after selling all property attached by him remaining in his hands and

applying the proceeds, together with the proceeds of any debt or credit collected by him, deducting his fee, to the payment of the judgment, any balance shall remain due, the sheriff must proceed to collect such balance as upon an execution in other cases. Whenever the judgment shall have been paid, the sheriff, upon reasonable demand, must deliver over to the defendant the attached property remaining in his hands, and any proceeds of property attached unapplied on the judgment.

6677. (910). **When Suits May be Commenced on the Undertaking.** If the execution is returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to Section 6660 or Section 6680 (913), or he may proceed as in other cases upon the return of an execution.

Rosenthal v. Perkins, 123 Cal. 245; 55 Pac. 804.

6678. (911). **If the Defendant Recover Judgment—What the Sheriff is to Deliver.** If the defendant recover judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the sheriff, and all the property attached remaining in the sheriff's hands, must be delivered to the defendant or his agent; the order of attachment shall be discharged and the property released therefrom.

Michener v. Fransham, 33 Mont. 112; 81 Pac. 954;

Hamilton v. Bell, 137 Cal. 94; 55 Pac. 758.

6679. (912). **Proceedings to Release Attachment—Before Whom Taken.** Whenever the defendant has appeared in the action, he may, upon reasonable notice to the plaintiff, apply to the court in which the action is pending, or to the judge thereof, for an order to discharge the attachment, wholly or in part, and upon the execution of the undertaking mentioned in the next section, an order may be made, releasing from the operation of the attachment any or all of the property attached; and all of the property so released, and all of the proceeds of the sale thereof, must be delivered to the defendant, upon the justification of the sureties on the undertaking, if required by the plaintiff.

6680. (913). **Attachment—In What Cases It may be Released and Upon What Property.** Before making such order, the court or judge must require an undertaking on behalf of the defendant, by at least two sureties residents and freeholders, or householders, in the State, to the effect that in case the plaintiff recover judgment in the action, the defendant shall, on demand, re-deliver the attached property so released to the vill, on demand, re-deliver the attached property so released to the proper officer, to be applied to the payment of the judgment, or, in default thereof, that the defendant and sureties will, on demand, pay to the plaintiff the full value of the property released. The court or judge making the order may fix the sum for which the undertaking shall be executed, and if necessary in fixing such sum to know the value of the property released, the same may be appraised by one or more disinterested persons, to be appointed for that purpose. The sureties may be required to justify before the court or judge, and the property attached can not be released without their justification, if the same be required.

Hamilton v. Bell, 137 Cal. 94; 55 Pac. 758.

6681. (914). **When a Motion to Discharge Attachment May be Made and Upon What Ground.** The defendant may also at any time, either before or after the release of the attached property, or before any attachment shall have been actually levied, apply on motion, upon reasonable notice to the plaintiff, to the court in which the action is brought, or to a judge thereof, that the writ of attachment be discharged on the ground that the same was improperly or irregularly issued.

Wilson v. Barbour, 21 Mont. 179; 53 Pac. 317.

Where a writ of attachment has been issued upon an affidavit which is sufficient as to five of seven causes of action, but insufficient as to the remaining two, a motion to discharge the whole writ is properly denied.

Sparks v. Bell, 137 Cal. 418; 70 Pac. 281.

6682. (915). **When Motion Made on Affidavit It May be Opposed by Affidavit.** If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to those on which the attachment was made.

Wilson v. Barbour, 21 Mont. 179; 53 Pac. 317;

Sparks v. Bell, 137 Cal. 418; 70 Pac. 281.

6683. **When Writ Must be Discharged.** If, upon such application, it satisfactorily appears that the writ of attachment was improperly or irregularly issued, it must be discharged. But the court or judge may allow the plaintiff to amend his affidavit or undertaking.

Newell v. Whitwell, 16 Mont. 258; 40 Pac. 871;

Wilson v. Barbour, 21 Mont. 179; 53 Pac. 317;

Sparks v. Bell, 137 Cal. 418; 70 Pac. 281.

6684. (917). **Motion to Vacate or Modify Writ of Increase Security.** The defendant, or a person who has acquired a lien upon or interest in his property, after it was attached, may, at any time before the actual application of the attached property, or the proceeds thereof, to the payment of a judgment recovered in the action, apply to vacate or modify the writ of attachment, or to increase the security given by the plaintiff, or for one or more of those forms of release together, or in the alternative.

6685. (918). **How Motion Made.** An application, specified in the last section, may be founded only upon the papers upon which the writ was granted; in which case it must be made to the court or judge, with or without notice, as the court or judge deems proper, or it may be founded upon proof, by affidavits, on the part of the defendant, or a person who has acquired a lien upon or interest in his property after it was attached, in which case it must be made to the court or judge upon notice; and it may be opposed by new proof, by affidavit or other evidence on the part of the plaintiff, tending to sustain any grounds of attachment.

6686. (919). **When Writ to be Returned.** The sheriff must return the writ of attachment with the summons, if issued at the same time, otherwise, within twenty days after its receipts, with a certificate of his proceedings indorsed thereon or attached thereto; and whenever an order has been made discharging or releasing an attachment upon real property, a certified copy of such order must be filed in the office of the county clerk in which the notice of the attachment has been filed, and be indexed in like manner.

Hesser v. Rowley, 139 Cal. 413; 73 Pac. 156.

6687. (920). **Different Attachments—When Liens Accrue.** All liens by attachment shall accrue at the time the property of the defendant shall be attached by the officer charged with the execution of the writ in the order in which the writs are levied; and said lien shall not be affected by any subsequent attachment, or by any judgment obtained subsequent thereto. The writ of attachment first placed in the hands of the sheriff must be executed first, and when there are several writs against the same defendant, they must be executed in the order in which they were received by the sheriff.

No written specification of property to be levied upon must be required by the sheriff, except as to property referred to in 6666 (899) and

subdivision 2, of 6662 (895). The sheriff must indorse upon each writ of attachment received by him the time when the same was received, specifying the day, hour and minute.

6688. (921). **Partners May Apply to Discharge Attachment.** If a writ of attachment is levied upon the interest of one or more partners, in goods or property of a partnership, the other partners, who are not defendants in the action, or any of them, may, at any time before final judgment, apply to the judge who granted the writ, or to the court upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

6689. (922). **Undertaking to be Given.** Upon such an application, the applicant must give an undertaking, with at least two sufficient sureties to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action; or which may be recovered against him, in any other action, wherein the other partners are not defendants, and wherein a writ of attachment, or an execution may come into the sheriff's hands, at any time before the writ of attachment, which was so levied, is vacated and annulled; not exceeding the sum specified in the undertaking which must not be less than the value of the interest of the defendant, in the goods or property seized, by virtue of the attachment, as fixed by the court or judge. If the value, in the opinion of the court or judge, is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony, or may direct a reference.

6690. (923). **Property Mortgaged and Pledged—How Taken.** Personal property mortgaged or pledged may be taken on attachment, as provided in 5766 (3869), of the Civil Code.

6691. (924). **Attachment Book.** There must be kept in the office of the county clerk of each county, a book called "Attachment Book," in which must be entered by such clerk, in alphabetical order, the names of all persons against whom any writ or notice of attachment has been filed in his office. There must also be entered in said book the time such writ or notice was filed. Such entry must be made under an appropriate head for that purpose.

6692. **Garnishment of Public Officers.** Money, credits, or other property belonging to or due and owing to another, in the possession of, or under the control of a public officer or board, including all officers or boards of a county, municipal corporation, and school district or State board or State government, may be attached or garnished while in such possession or under such control, by making service as provided in Section 6662 of the Code of Civil Procedure, upon the clerk of the county or chairman of the board of county commissioners, the city clerk or mayor of a municipal corporation, or upon the clerk of the board of school trustees or chairman of such board, as the case may be.

(Act approved March 16, 1901.) (Seventh Sess. 159.)

#### CHAPTER V.

##### Attachment of Live Stock on Ranges

- Section 6693. Range stock, how it may be attached.
- Section 6694. Possession under a mortgage, how required.
- Section 6695. Time attachment holds good, limited.
- Section 6696. Duties of county clerk to record attachment.
- Section 6697. How a subsequent attachment may be made.

6693. (940). **Range Stock—How It May be Attached.** Whenever it is necessary for an officer or person charged with the service of process out of any of the courts of this State to take possession of any cattle or horses running at large and commonly known as range stock, between the 1st day of November and the next succeeding 15th day of May, it is a sufficient service of such process for the officer or person charged with the service of the same to file a copy thereof, with a notice appended thereto containing the number, as near as may be, and a description of said stock by marks and brands, that such property or a portion thereof, as the case may be, is attached or levied upon, in pursuance of such process, with the county clerk of the county wherein such property is running at large, within fifteen days after the receipt of such process for service, and shall make due return of his said proceedings upon said process.

Rosenbaum Co. v. Ryan Bros. Co., 33 Mont. 426; 84 Pac. 1120.

6694. (941). **Possession Under a Mortgage—How Acquired.** In all cases where it is necessary under the laws of this State for a party to any mortgage, assignment, bill of sale or other contract, between the 1st day of November and the next succeeding 15th day of May, to take possession of any such cattle or horses in order to preserve his rights under any such mortgage, assignment, bill of sale or other contract, it is sufficient for such party to file a copy of the instrument under which he claims, with a notice of such claim appended thereto, with the county clerk of the county wherein such property is running at large, within five days after it becomes necessary for him to so take custody and possession of the same.

6695. (942). **Time Attachment Holds Good—Limited.** When the copy of the process or instrument, with the proper notice appended thereto, is filed as hereinbefore provided, it has the same effect as if actual possession of said cattle and horses had been taken by the officer or person charged with the execution of such process, or the party required under said instrument to take the same, and shall continue to have such effect until actual possession of such property has been taken or had by the officer person, or party aforesaid; *Provided*, that such actual possession be had or taken prior to the 1st day of August next succeeding.

6696. (943). **Duties of County Clerk to Record Attachment.** It is the duty of the county clerk to file all papers deposited with him for that purpose, and required to be filed under this chapter, and preserve the same as other records of his office are preserved, and furnish to persons making inquiry about such files all necessary information concerning the same.

6697. (944). **How a Subsequent Attachment May be Made.** When an officer into whose hands a writ of execution is placed has served the same in accordance with 6693 (940) of this chapter, and made his return in accordance with the facts, at any time thereafter, within the time limited as hereinbefore provided to hold the property taken or levied upon under such writ, another writ of execution may be issued, which must be supplementary to the first writ, and in pursuance of which the officer or person charged with the service thereof may sell the property held by the said first writ, as hereinbefore provided.

#### ARTICLE II.

##### Attachment

- Section 7026. Writ of attachment shall issue upon affidavit.
- Section 7027. Undertaking on an attachment must be required.
- Section 7028. Form of writ. Bond to avoid levy.
- Section 7029. Certain provisions apply to all attachments in justices' court.

7026. (1560). **Writ of Attachment Shall Issue Upon Affidavit.** A writ to attach the property of the defendant must be issued by the justice at the time of or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in 6657 (891) of this code.

7027. (1561). **Undertaking on An Attachment Must be Required.** Before issuing the writ of justice must require a sufficient surety on the part of the plaintiff, with two or more sufficient sureties, in a sum not less than fifty nor more than three hundred dollars, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendants and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking.

7028. **Form of Writ. Bond to Avoid Levy.** The writ may be directed to the sheriff or any constable of the county, or the sheriff of any other county and must require him to attach and safely keep all the property of the defendant in his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint, unless the defendant has given him security, by the undertaking of two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, in which case to take such undertaking. Such undertaking is to be to the plaintiff or plaintiffs in the action, and shall be approved in writing on the back thereof by the plaintiff or plaintiffs, or his or their attorney or attorneys or upon their refusal, by the justice issuing such writ. (Act approved March 7, 1899, 2.) (Sixth Sess. 141.)

7029. (1562). **Certain Provisions Apply to All Attachments in Justices' Courts.** The sections of this code from 6661 (894) to 6691 (924) both inclusive, are applicable to attachments issued in justices' courts, the word "constable" being substituted for the word "sheriff," whenever the writ is directed to a constable, and the word "justice" substituted for "judge."

#### NEVADA

5169. **Garnishment Issuable With Attachment or Afterwards.** At the time of issuing a writ of attachment in an action, or at any time thereafter, the plaintiff may have a writ of garnishment issue, and thereupon attach the credits, effects, debts, choses in action, and other personal property of the defendant in the possession or under the control of any third person, as garnishee, for the security of any judgment the plaintiff may recover in such action against the defendant. (Colo., Mills, An. C. (1896), 118; Utah, 3096.)

5170. **When Garnishee Ordered to Appear.** Whenever, in any action pending in any court of record, a writ of attachment has been issued and delivered to the proper officer, and the officer after diligent search shall not be able to find property of the defendant sufficient to satisfy the claim of plaintiff, officer shall, upon the request of plaintiff, his agent, or attorney, summon such person or persons as the plaintiff may direct as garnishees to appear before the court wherein such action is pending. (Colo., Mills, An. C. (1896), 118; Utah, 3091.)

5171. **Writ Issued by the Officer—Form.** The writ of garnishment shall be issued by the officer to whom the writ of attachment is delivered, and may be in substance as follows:

In the \_\_\_\_\_ Judicial District Court of the State of Nevada, in and for the county of \_\_\_\_\_

Plaintiff, vs. \_\_\_\_\_ Defendant.  
The State of Nevada, to \_\_\_\_\_ garnishee, Greeting:

You are hereby notified that you are attached as garnishee in the above-entitled action, and you are commanded not to pay any debt due or to become due from yourself to the said \_\_\_\_\_ defendants, or either of them, and that you must retain possession and control of all personal property, effects, and choses in action of said \_\_\_\_\_ defendants, or either of them, in order that the same may be dealt with according to law; you are required to answer the interrogatories attached hereto within ten days from date of service of this writ upon you if you are served in the county in which said action is brought, otherwise within twenty days from the date of such service. In case of your failure within the time aforesaid, the plaintiff may apply to the court for relief against you. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Colo., Mills, An. C. (1896), 120; Utah, 3092.)

5172. **Names of Garnishees Inserted in Writ—Service and Return—Allas Writ.** The names of as many individuals, corporations, or other persons as are sought to be charged as garnishees may be inserted in the same or different writs of garnishment; and the writ shall be served and returned by the officer issuing the same, in the same manner as a summons in the action; and in like manner allas writs may be issued, served, and returned. (Colo., 121; Utah, 3093.)

5173. **Service and Return of Writ Give Court Jurisdiction.** It shall not be necessary for the sheriff to return the writ of attachment before serving the writ of garnishment, but the return of the latter writ, showing due service on the person therein named as garnishee, shall give the court jurisdiction to proceed against such garnishee as hereinafter provided. (Colo., 122; Utah, 3094.)

5174. **Garnishee to Answer Under Oath—Fee—Substance of Interrogatories.** The garnishee shall answer the interrogatories in writing upon oath or affirmation; but in no case shall the garnishee be required to answer any interrogatories unless and until he is paid or tendered by the plaintiff in the action or the officer serving the writ, a fee of two dollars, and unless such sum is paid or tendered to him or to the person making the answer in his behalf, no answer can be required of such garnishee or any person acting for him. In case such fee is paid or tendered, it is hereby made the duty of the officer serving the writ of garnishment to administer such oath or affirmation and to take and return such answer with the writ, or the garnishee after receiving the fees aforesaid may answer in like manner before anyone authorized to administer oaths and affirmations, and in the latter case it shall be the duty of the garnishee to file his answer, or to cause the answer to be filed, in the proper court within the proper time required by the writ, or he shall be deemed in default.

The interrogatories may be in substance as follows:

First: Are you in any manner indebted to the defendants, or either of them, either in property or money, and is the same now due? If not due, when is the same to become due? State full particulars.

Answer: \_\_\_\_\_

Second: Have you in your possession, in your charge, or under your control, any property, effects, goods, chattels, rights, credits, or choses in action of said defendants, or either of them, or in which he is interested? If so, state what is the value of the same, and state fully all particulars.

Answer: \_\_\_\_\_

I, (insert the name of the garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed to are true.

Signature of Garnishee.

Subscribed and sworn to before me, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
(Colo., 123; Utah, 3095.)

**5175. Property to be Delivered to Sheriff—Sale—Judgment Against Garnishee.** If the answer of the garnishee shows that he has personal property of any kind in his possession or under his control, belonging to the defendant, the court shall enter judgment that the garnishee deliver the same to the sheriff, and if the plaintiff recover judgment against defendant in the action, such property or so much thereof as may be necessary shall be sold as upon execution, and the proceeds applied toward the satisfaction of such judgment, together with the costs of the action and proceedings, and if there be a surplus of such property, or of the proceeds thereof, it shall be restored to the defendant. If the answer shows that the garnishee is indebted to the defendant, then, if the plaintiff recover judgment against the defendant in the action, the court shall also enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for the amount of the indebtedness admitted in the answer, provided that the judgment against the garnishee shall not be for a greater sum than is necessary to satisfy the judgment of the plaintiff against the defendant, together with costs as aforesaid; and in no case shall the garnishee be chargeable with costs unless his answer shall be successfully controverted as hereinafter provided.

(Colo., 124; Utah, 3096.)

A third person in possession of property attached as property of a defendant is liable to plaintiff for any property or credits of defendant which he may hold after his own rights, if any, are satisfied.

Persing v. Reno B. Co., 30 Nev. 342, 350; 96 Pac. 1054.

**5176. Garnishee May Deliver Money or Property—Release—Return.** In all cases the garnishee, upon making answer, may deliver to the officer serving the writ the property belonging to the defendant, together with the money due to the defendant, as shown by the answer, and the officer shall make return of such property and money with the writ to the court, to be dealt with as provided in the foregoing section; and thereupon the garnishee shall be relieved from further liability in the proceedings, unless his answer shall be successfully controverted as hereinafter provided.

(Colo., 125; Utah, 3097.)

**5177. Judgment Against Garnishee on Failure to Answer.** If the garnishee having been duly served with the writ of garnishment and interrogatories, and having been paid or tendered the fee of two dollars, and the fact of such payment or tender is duly certified by the officer who served the writ over his official signature, or such fact is made to appear by the person serving the writ under oath, by affidavit, and after such payment or tender, when duly certified or proved as above provided, fails or refuses to answer the interrogatories within the time required, the plaintiff may commence an action against him in the manner other civil actions are commenced to recover a judgment against such garnishee. The plaintiff may, prior to the institution of such action, have a citation issued out of the court and served upon the said garnishee requiring him to appear before the court for examination and to testify as to any liability upon his part to the defendant in the action and may likewise require other witnesses upon subpoena to appear at the same time and testify as to such liability. Upon the complaint and summons being served upon the garnishee, the action shall proceed as in other civil cases. If the plaintiff obtain a verdict or decision against the garnishee, the plaintiff may have judgment entered the same as if the garnishee had answered in accordance with such verdict or decision; and if a verdict or decision charge the garnishee with any liability, the plaintiff may recover costs of the proceedings against the garnishee.

(Colo., 126; Utah, 7098.)

**5178. Answer of Garnishee—Reply.** If the garnishee answer, as required by the writ, the plaintiff may, within ten days after the expiration of the time allowed for the filing of such answer, reply to the whole or any part thereof by an affidavit traversing the same; the plaintiff may also in his reply allege any matters which would charge the garnishee with liability according to the provisions of this chapter, and such affidavit may be upon information or belief. If the plaintiff fail to reply within the time aforesaid, he shall be deemed to have accepted the answer of the garnishee as true, and judgment may be entered accordingly.

**5179. New Matter in Plaintiff's Reply Deemed Denied—Trial—Judgment—Costs.** New matter in the affidavit replying to the answer of the garnishee shall be taken as denied or avoided, and the matter thus at issue without further pleadings shall be tried in the same manner as other issues of like nature, and upon verdict or finding thereon, judgment shall be entered the same as if the garnishee had answered according to such verdict or finding; provided, that if the verdict or finding be as favorable to the garnishee as his answer, he shall recover costs of the proceeding against the plaintiff, otherwise the plaintiff may recover costs against the garnishee.

(Colo., 128; Utah, 3100.)

**5180. Third Person May be Interpleaded—Notice—Proceedings.** When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may on motion order that such claimant be interpleaded as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court shall direct, be served upon him, and that after such service shall have been made, the garnishee may pay or deliver to the officer or the clerk such indebtedness or property, and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid or the property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action, and shall answer within ten days, setting forth his claim, or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

(N. Dakota (1895), 5397; Utah, 3101.)

**5181. Garnishee May Deduct Sums Due Him by Either Party—Record.** Every garnishee shall be allowed to retain or deduct out of the property, effects, or credits of the defendant in his hands all demands against the plaintiff and all demands against the defendant of which he could have availed himself if he had not been summoned as garnishee, whether the same are at the time due or not, and he shall be liable for the balance, only after all mutual demands between himself and plaintiff and defendant are adjusted, not including unliquidated damages for wrongs and injuries; provided, that the verdict or finding as well as the record of the judgment shall show in all cases against which party, and the amount thereof, any counterclaim shall be allowed, if any shall be allowed.

**5182. Judgment Acquits Garnishee for Amounts Paid.** The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects, and credits paid, delivered, or accounted for by the garnished by force of such judgment.

(Colo., 132; Utah, 3104.)

**5183. Discharge of Garnishee Does Not Bar Action by Defendant.** If the person summoned as garnishee is discharged the judgment shall be no bar to an action brought against him by the defendant for the same demand.

5184. **Judgment Against Garnishee for Debt Not Due—Execution Deferred.** When the judgment is rendered against any garnishee and it shall appear that the debt from him to the defendant is not yet due, execution shall not issue until the debt shall have become due.

(Colo., 135; Utah, 3107.)

5185. **Property Pledged to Garnishee Delivered on Payment.** When any personal property, choses in action, or effects of the defendant in the hands of a garnishee are mortgaged or pledged, or in any way liable for the payment of a debt to him, the plaintiff may, under an order of the court for that purpose, pay or tender the amount due to the garnishee, and thereupon the garnishee shall deliver the personal property, choses in action, and effects to the sheriff, as in other cases.

(Colo., 135; Utah, 3107.)

5186. **Idem. If Held to Secure Performance—Plaintiff May Perform.** If the personal property or effects are held for any purpose other than to secure the payment of money, and if the contract, condition, or other thing to be done or performed, is such as can be performed by the plaintiff without damage to the other parties, the court may make an order for the performance thereof by him, and upon such performance, or a tender of performance, the garnishee shall deliver the personal property and effects to the sheriff, as in other cases.

(Colo., 136; Utah, 3108.)

5187. **Idem. Disposal of Proceeds—Plaintiff Reimbursed.** All personal property, choses in action, and effects received by the sheriff under either of the two proceeding actions shall be disposed of in the same manner as if they had been delivered by the garnishee without condition, except that the plaintiff shall, out of the proceeds thereof, be first repaid by him to the garnishee for the redemption of the same, or shall be indemnified for any other act or thing by him done or performed, pursuant to the order of the court for the redemption of the same.

5188. **Garnishee Liable for Contempt.** If any garnishee refuses or neglects to deliver any personal property, choses in action, or effects in his hands, when thereto lawfully required by the court, he shall be liable to be attached or punished for contempt.

(Colo., 139; Utah, 3110.)

Persing v. Reno B. Co., 96 Pac. 1054.

5189. **Costs Taxed in Discretion of Court—Garnishee Paid Witness Fee.** The court may order the costs of the proceedings in any garnishment to be paid by the plaintiff, or out of the effects or credits garnished, or by the garnishee, or may apportion the same as shall appear to be just and equitable. The garnishee shall be entitled to fees and mileage as a witness, where he does not improperly resist or make costs.

(Colo., 139; Utah, 3.)

1590. **Garnishment After Judgment—Procedure—Liberal Construction.** Any person having a judgment remaining unsatisfied in any court of record in the State, upon which execution has been issued and delivered, and which remains in the hands of the proper officer uncollected and unsatisfied, may have a writ of garnishment issued, and thereupon attach the credits, effects, debts, choses in action, and other personal property of the judgment debtor in the possession or under the control of any third person as garnishee, for the security of such judgment, and all rights, remedies, and proceedings under this chapter are hereby made specially available and applicable for the relief and security of such judgment creditor, the same as for a plaintiff in attachment, and the same are also made especially available and applicable for the protection and security of the

judgment debtor and the garnishee, the same as for the defendant and garnishee in attachment, and the forms of all affidavits, interrogatories, writs, answers, oaths, orders, trials, judgments, and other process and proceedings heretofore provided for cases of garnishment before judgment, with appropriate variations shall apply to cases of garnishment after judgment, and all courts shall be liberal in allowing amendments, and in construing this chapter so as to promote the objects thereof.

(Colo., 140; Utah, 3112.)

5191. **New Trials and Appeals as in Other Cases.** Motions for new trials may be made in the same time and manner and shall be allowed for the same grounds in garnishment proceedings as in other civil trials; and appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.

(Colo., 141; Utah, 3113.)

#### CHAPTER XXIV.

##### Deposit in Court

5192. **When Deposit or Delivery of Money or Property Required.** When it is admitted, by the pleading of examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of litigation, is held by him as trustee for another party, or which belongs or is due to another party, the court may order the same, upon motion, to be deposited in court, or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

(Kerr C. C. P. 572.)

Florence-Goldfield Mining Co. v. District Court, 97 Pac. 49.

#### OREGON

301. **Writ—How Executed.** The sheriff to whom the writ is directed and delivered shall execute the same without delay, as follows:

3. Other personal property shall be attached by leaving a certified copy of the writ, and a notice specifying the property attached, with the person having possession of the same, or if it be a debt, then with the debtor, or if it be rights or share in the stock of an association or corporation, then with such person or officer of such association or corporation as this code authorizes a summons to be served upon.

Geddes v. Sears, 10 Pac. 631;

Schneider v. Sears, 8 Pac. 841;

Marks v. Shoup, 181 U. S. 562;

Spaulding v. Kennedy, 6 Or. 209;

Lewis v. Birdsey, 26 Pac. 623;

Carter v. Koshland, 8 Pac. 556; 12/58;

Barr v. Warner, 62 Pac. 899;

Batchelor v. Richardson, 21 Pac. 392;

Coos Bay R. Co. v. Weider, 38 Pac. 338;

Despain v. Crow, 12 Pac. 506;

Baker v. Egin, 8 Pac. 280.

302. **Effect of Attachment as to Third Persons.** From the date of the attachment until it is discharged or the writ executed, the plaintiff, as against third persons, shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property. Any person, association, or corporation mentioned in subdivision 3 of Section 301, from the service of a copy of the writ and notice as therein provided, shall, unless such property, stock, or debts be delivered, transferred, or paid to the sheriff, be liable to the plaintiff for the amount thereof until

the attachment be discharged or any judgment recovered by him be satisfied.

- Boehringer v. Creighton, 10 Or. 42;  
Gill v. Frank, 8 Pac. 764;  
Dickie v. Henarie, 15 Pac. 464;  
Riddle v. Miller, 23 Pac. 807;  
Dimmick v. Rosenfeld, 55 Pac. 100;  
Osgood v. Osgood, 55 Pac. 1017;  
Rhodes v. McGarry, 23 Pac. 971;  
Meier v. Hess, 32 Pac. 755;  
Security Tr. Co. v. Loewenberg, 62 Pac. 647;  
O. R. & N. v. Gates, 10 Or. 514;  
Baker v. Ezlin, 8 Pac. 280;  
Phipps v. Risley, 16 Pac. 185;  
Case v. Noyes, 19 Pac. 104.

304. **Garnishee to Furnish Certificate.** Whenever the sheriff, with a writ of attachment against the defendant, shall apply to any officer or person mentioned in subdivision 3 of Section 301, for the purpose of attaching any property mentioned therein, such person or officer shall furnish him with a certificate, designating the amount and description of any property in his possession, belonging to the defendant or any debt owing to the defendant, or the numbers of rights or shares of the defendant in the stock of the association or corporation, with any interest or profits or incumbrance thereon. If such person or officer refuse to do so, or if the certificate, when given, be unsatisfactory, to the plaintiff, he may be required by the court, or judge thereof, where the action is pending, to appear before him and be examined on oath concerning the same, and disobedience to such order may be punished as contempt.

- Carter v. Koshland, 8 Pac. 556;  
Altona v. Dabney, 62 Pac. 521;  
Burns v. Payne, 49 Pac. 884;  
Batchellor v. Richardson, 21 Pac. 392;  
Barr v. Warner, 62 Pac. 899;  
Adamson v. Frazier, 67 Pac. 300; 66/810.

314. **When Writ to be Returned.** When the writ of attachment shall be fully executed or discharged, the sheriff shall return the same, with his proceedings endorsed thereon, to the clerk of the court where the action was commenced.

315. **Order Upon Garnishee.** The order provided for in Section 304 shall require such person or officer to appear before such court or judge at a time and place therein stated. In the proceedings thereafter upon such order such person or association or corporation shall be known as the garnishee.

- De Witt v. Kelly, 23 Pac. 666;  
Adamson v. Frazier, 66 Pac. 811.

316. **Interrogatories to Garnishee.** After the allowance of the order and before such garnishee or officer thereof shall be required to appear, or within a time to be specified in the order, the plaintiff may serve upon such garnishee or officer thereof written allegations and interrogatories touching any of the property liable to attachment as the property of the defendant, as provided in subdivision 3 of Section 301, and to which such garnishee or officer thereof is required to give a certificate as provided in Section 304.

- Case v. Noyes, 19 Pac. 104;  
Smith v. Conrad, 31 Pac. 298; 21/46.

317. **Answer of Garnishee.** On the day when the garnishee or officer thereof shall be required to appear before the court or judge thereof, he

shall return the allegations and interrogatories of the plaintiff to the court or judge, with his written answer thereto, unless for good cause shown a further time be allowed. Such answer shall be on oath, and shall contain a full and direct response to all the allegations and interrogatories.

- Faulk v. Alaska G. & S. Mining Co., 14 Fed. 657; Phipps v. Rieley, 16/185;

- Mullaney v. Evans, 54 Pac. 886;  
Dawson v. Maria, 16 Pac. 418;  
Case v. Noyes, 19 Pac. 104.

NOTE.—The proceedings authorized by Nos. 315, 317, 318 and 321 can be invoked only in cases where the garnishee refuses to make a certificate, or where the certificate made is unsatisfactory. (cf. 315.)

318. **Garnishee May Be Compelled to Answer.** If the garnishee or officer thereof fail to answer, the court or judge thereof, on motion of the plaintiff, may compel him to do so, or the plaintiff may, at any time after the entry of judgment against the defendant in the action, have judgment against the garnishee for want of such answer. In no case shall judgment be given against the garnishee for a greater amount than the judgment against the defendant in the action.

319. **Exceptions to Answer.** The plaintiff may except to the answer of the garnishee or officer thereof for insufficiency within such time as may be prescribed or allowed, and if the same be adjudged insufficient, such garnishee or officer may be allowed to amend his answer, on such terms as may be proper, or judgment may be given for the plaintiff as for want of answer, or such garnishee or officer may be compelled to make sufficient answer.

320. **Reply to Answer.** The plaintiff may reply to the whole or part of the answer within such time as may be prescribed or allowed, and the issues arising thereon shall be tried as ordinary issues of fact between plaintiff and defendant. If the answer be not excepted or replied to within the time prescribed or allowed, it shall be taken to be true and sufficient.

321. **Judgment Against Garnishee.** If by the answer it shall appear, or if upon trial it shall be found, that the garnishee at the time of the service upon him or the officer thereof of the copy of the writ of attachment and notice, had any property of the defendant's liable to attachment as provided in subdivision 3 of section 301, as to which such garnishee or officer thereof is required to give a certificate as provided in Section 304, beyond the amount admitted in the certificate, or in any amount if the certificate was refused, judgment may be given against such garnishee for the value thereof in money. The garnishee may at any time before judgment discharge himself by delivering, paying or transferring the property to the sheriff.

322. **Execution Against Garnishee.** Executions may issue upon judgments against a garnishee as upon ordinary judgments between plaintiff and defendant, and costs and disbursements shall be allowed and recovered in like manner. Witnesses, including the defendant, and garnishee or officer thereof, may be required to appear and testify upon such proceedings against a garnishee, as upon the trial of an issue of fact.

323. **Restraining Order Against Garnishee.** The court or judge thereof in its discretion may, at the time of the application of the plaintiff for the order provided for in section 304, and at any time thereafter, before judgment against the garnishee, by order restrain the garnishee from paying, transferring, or in any manner disposing of or injuring any of the property of the defendant, alleged by the plaintiff to be in the garnishee's possession, control, or owing by him to the defendant, and disobedience to such order may be punished as a contempt.



## Of Levy and Sale Under Execution.

224. **Property in Possession of Garnishee, Execution Against.** In the case of property in the possession of or owing from any garnishee mentioned in section 304, the sheriff shall proceed as follows:

1. If it appear from the certificate of the garnishee that he is owing a debt to the judgment debtor, which is then due, if such debt is not paid by such garnishee to the sheriff on demand, he shall levy on the property of the garnishee for the amount thereof, in all respects as if the execution was against the property of the garnishee, but if such debt be not then due, the sheriff shall sell the same according to the certificate, as other property;

2. If, in like manner, it appear that the judgment debtor has rights or shares of stock in the garnishee as provided in section 304, the sheriff shall sell the same according to the certificate, as other property;

3. If, in like manner, it appear that the garnishee has other personal property of the judgment debtor in his possession, and the same has not been bailed to such garnishee for a period then unexpired, unless the same be delivered to the sheriff on demand, he shall levy upon the same wherever he may find it; but if such property is in the possession of such garnishee upon a bailment then unexpired, the sheriff shall sell the same, or the interest of the judgment debtor therein, according to the certificate, as other property.

De Witt v. Kelley, 23 Pac. 666; Adamson v. Frazier, 67 Pac. 300; 66/810.

225. **Certificate by Garnishee, When Property Not Delivered.** When a sheriff with an execution levies upon any of the personal property mentioned in subdivision 3 of section 301, and if the same is not delivered, paid or transferred to him at the time, and the garnishee furnish him the certificate required in section 304, he shall proceed thereafter in reference to such property as provided in section 234. Such property may be delivered, paid or transferred to the sheriff at the time of the levy or sufficient thereof to satisfy the execution and the sheriff's receipt to the person, association, or corporation, as the case may be, shall be a sufficient discharge thereof.

226. **Order to Examine Garnishee, in What Cases.** Whenever the sheriff, with an execution against the property of the judgment debtor, shall apply to any person or officer mentioned in subdivision 3 of section 301, for the purpose of levying on any property therein mentioned, such person or officer shall forthwith give to the sheriff a certificate in the manner prescribed in section 304. If such person or officer refuse to do so, or if the certificate be unsatisfactory to the plaintiff in the writ, he may in like manner have the order prescribed in such section against such person or officer. Thereafter the proceedings upon such order shall be conducted in the manner prescribed in chapter 111 of title IV, from section 314 to section 323, inclusive.

# UTAH

## Garnishment

3090. Garnishment is issuable with attachment or afterward; or upon commencement of action in certain instances. When.

At the time of issuing a writ of attachment in an action, or at any time thereafter, the plaintiff may have a writ of garnishment issue, and thereupon attach the credits, effects, debts, choses in action, and other personal property of the defendant in the possession or under the control of any third person, as garnishee, for the security of any judgment the plaintiff may recover in such action against the defendant; but any indebtedness owing to a defendant not personally served in this State with summons, when such indebtedness arises and is payable outside the State, shall not be subject to attachment, garnishment or execution, except in cases where

the plaintiff is a citizen of the State and sues in his own right and not as an assignee; but in such cases these facts must affirmatively appear by affidavit served with the writ of attachment or garnishment. If such facts do not appear then the garnishee shall be under no liability on account of such writ of attachment or garnishment. Where the indebtedness arises outside of the State the presumption is that it is payable outside of the State.

It is further provided that upon the commencement of any personal action arising upon a contract express or implied or upon any judgment or decree already obtained, the plaintiff may obtain a writ of garnishment by making and filing with the justice of the peace in a justice court, or with the clerk of a court in which said action was brought, an affidavit stating that he has good reason to believe and does believe that any certain person, firm, or corporation, private or public, has property, money, goods, chattels, credits or effects in his or its hands or under his or its control belonging to the defendant or defendants, or any or either of them, or that such the defendant is indebted to him or it on such contract, judgment or decree, sued upon, and that he is justly apprehensive of the loss of the same unless writ of garnishment issue. The garnishee thereupon is liable to the plaintiff from the time of the service of such writ to the amount of the aforesaid property or indebtedness belonging or due to the defendant and shall make answer to the writ as provided by law.

Before issuing said writ of garnishment, the justice or the clerk must require a written undertaking on the part of the plaintiff, with sufficient sureties, in a sum not less than double the amount claimed by the plaintiff, but in no case shall the undertaking required exceed \$10,000, or be less than \$50 in amount. The condition of said undertaking shall be to the effect that if the defendant recover judgment, or if a writ of garnishment be wrongfully issued, the plaintiff will pay the defendants all costs that may be awarded to the defendants, and all damages which he may sustain by reason of the issuance of said writ of garnishment, not exceeding the amount specified in the undertaking.

If the defendant is a non-resident of the State, said fact must be set forth in the affidavit. Further and subsequent or supplemental proceedings may be had as herein elsewhere provided.

3091. **When Garnishee Ordered to Appear.** Whenever, in any action pending in any court in the State, a writ of attachment has been issued and delivered to the proper officer, and the officer after diligent search shall not be able to find property of the defendant sufficient to satisfy the claim of plaintiff, the officer shall, upon the request of plaintiff, his agent, or attorney, summon such person or persons as the plaintiff may direct as garnishees to appear before the court wherein such action is pending.

3092. **Writ Issued by the Officer—Form.** The writ of garnishment shall be issued by the officer to whom the writ of attachment is delivered, and may be in substance as follows:

In the District Court of.....County, State of Utah.  
 ..... Plaintiff v. .... Defendant.

The State of Utah to....., Garnishee:

You are hereby notified that you are attached as garnishee in the above entitled action, and you are commanded not to pay any debt due or to become due from yourself to the said ..... defendants, or either of them, and that you must retain possession and control of all personal property, effects and choses in action of said ..... defendants, or either of them, in order that the same may be dealt with according to law; you are required to answer the interrogatories attached hereto within ten days from the date of the service of this writ upon you if you are served in this

county in which said action is brought, otherwise within twenty days from the date of such service. In case of your failure within the time aforesaid, the plaintiff may apply to the court for relief against you.

Given under my hand the ..... day of ..... 19.....

2093. **Names of Garnishees Inserted in Writ—Service and Return—Alias Writ.** The names of as many individuals, corporations, or other persons as are sought to be charged as garnishees may be inserted in the same or different writs of garnishment; and the writ shall be served and returned by the officer issuing the same, in the same manner as a summons in the action; and in like manner alias writs may be issued, served and returned.

Col., Mills' An. C. (1896) 121.

2094. **Service and Return of Writ Give Court Jurisdiction.** It shall not be necessary for the sheriff to return the writ of attachment before serving the writ of garnishment, but the return of the latter writ, showing due service on the person therein named as garnishee, shall give the court jurisdiction to proceed against such garnishee as hereinafter provided.

Col., Mills' An. C. (1896) 122.

2095. **Garnishee to Answer Under Oath—Fee—Substance of Interrogatories.** The garnishee shall answer the interrogatories in writing upon oath or affirmation; but in no case shall the garnishee be required to answer any interrogatories unless and until he is paid or tendered by the plaintiff in the action, or the officer serving the writ, a fee of \$2.00, and unless such sum is paid or tendered to him or to the person making the answer in his behalf, no answer can be required of such garnishee or any person acting for him. In case such fee is paid or tendered, it is hereby made the duty of the officer serving the writ of garnishment to administer such oath or affirmation and to take and return such answer with the writ, or the garnishee, after receiving the fees aforesaid, may answer in like manner before anyone authorized to administer oaths and affirmations, and in the latter case it shall be the duty of the garnishee to file his answer, or to cause the same to be filed, in the proper court within the proper time required by the writ or he shall be deemed in default.

The interrogatories may be in substance as follows:

1. Are you in any manner indebted to the defendants, or either of them, either in property or money, and is the same now due? If not due, when is the same to become due? State full particulars.

Answer: .....

2. Have you in your possession, in your charge, or under your control, any property, effects, goods, chattels, rights, credits, or choses in action of said defendants or either of them, or in which he is interested? If so, state what is the value of the same, and state fully all particulars.

Answer: .....

3. Do you know of any debts owing to the said defendant, whether due or not due, or any property, effects, goods, chattels, rights, credits or choses in action belonging to him, or in which he is interested, and now in the possession or under the control of others? If so, state the particulars.

Answer: .....

Signature of Garnishee.

I (insert the name of the garnishee), do solemnly swear (or affirm) that the answers to the foregoing interrogatories by me subscribed are true, so help me God.

Signature of Garnishee.

Subscribed and sworn to before me this ..... day of ..... 19.....

The plaintiff may, in his discretion, add other pertinent interrogatories.

Col., Mills' An. C. (1896) 123. Am'd '05, p. 35.

3096. **Property to be Delivered to Sheriff—Sale—Judgment Against Garnishee.** If the answer of the garnishee shows that he has personal property of any kind in his possession, or under his control, belonging to the defendant, the court shall enter judgment that the garnishee deliver the same to the sheriff, and if the plaintiff recover judgment against the defendant in the action, such property or so much thereof as may be necessary, shall be sold as upon execution, and the proceeds applied toward the satisfaction of such judgment, together with the costs of the action and proceedings, and if there be a surplus of such property, or of the proceeds thereof, it shall be restored to the defendant. If the answer shows that the garnishee is indebted to the defendant, then, if the plaintiff recover judgment against the defendant in the action, the court shall also enter judgment in favor of the defendant for the use of the plaintiff against the garnishee for the amount of the indebtedness admitted in the answer; provided, that the judgment against the garnishee shall not be for a greater sum than is necessary to satisfy the judgment of the plaintiff against the defendant, together with costs as aforesaid; and in no case shall the garnishee be chargeable with the costs unless his answer shall be successfully controverted as hereinafter provided.

Col., Mills' An. C. (1896) 124.

3097. **Garnishee May Deliver Property or Money—Release—Return.** In all cases the garnishee, upon making answer, may deliver to the officer serving the writ the property, belonging to the defendant, together with the money due to the defendant, as shown by the answer, and the officer shall make return of such property and money with the writ to the court, to be dealt with as provided in the foregoing section; and thereupon the garnishee shall be relieved from further liability in the proceedings, unless his answer shall be successfully controverted as hereinafter provided.

Col., Mills' An. C. (1896) 125.

3098. **Judgment Against Garnishee on Failure to Answer.** If the garnishee, having been duly served with the writ of garnishment and interrogatories and has been paid or tendered the fee of \$2.00, and the fact of such payment or tender is duly certified by the officer who served the writ over his official signature, or such fact is made to appear by the person serving the writ under oath, by affidavit, and after such payment or tender when duly certified or proved as above provided, the garnishee fails or refuses to answer the interrogatories, within the time required, the plaintiff may enter a default against him and proceed before the court to prove the liability of the garnishee according to the provisions of this chapter (and in such case the garnishee, after the payment of the \$2.00 fee to him and not before, may be compelled to give testimony orally as a witness as in other cases), and upon a verdict or finding in that behalf the plaintiff may have judgment entered the same as if the garnishee had answered according to such verdict or finding; and if the verdict or finding charge the garnishee with any liability, the plaintiff may recover costs of the proceedings against the garnishee, but if the garnishee answers he shall be discharged without cost; provided, that the \$2.00 herein required to be paid to the garnishee shall be paid by the plaintiff in the action and shall be taxed against the defendant in the original action, in cases where the garnishee is found to have credits due the defendant in excess of legal exemptions; and provided, that in cases where the garnishee is found to have no credits due the defendant, the said \$2.00 shall not be taxed against the defendant; provided, that the payment of the costs by the defendant shall not apply in cases provided for in sub. 7 of 3245; and provided further, that in the event the garnishee shall be required to appear personally in court to testify, he shall, in addition to the fee of \$2.00, receive the usual witness fee and mileage, which shall be paid to him in advance, if so de-

manded, otherwise shall be taxed as costs in the action. Am'd '05, p. 37.

Col., Mills' An. C. (1896) 127.

**3099. Answer to Garnishee's Reply.** If the garnishee answer, the plaintiff may, within ten days after the expiration of the time allowed for the filing of such answer, reply to the whole or any part thereof by an affidavit traversing the same; the plaintiff may also in his reply allege any matters which would charge the garnishee with liability according to the provisions of this chapter, and such affidavit may be upon information and belief. If the plaintiff fail to reply to the time aforesaid, he shall be deemed to have accepted the answer of the garnishee as true, and judgment may be entered accordingly.

Col., Mills' An. C. (1896) 127.

**3100. New Matter in Plaintiff's Reply Deemed Denied—Trial—Judgment.—Costs.** New matter in the affidavit replying to the answer of the garnishee shall be taken as denied or avoided, and the matter thus at issue without further pleadings shall be tried in the same manner as other issues of like nature, and upon the verdict or finding thereon, judgment shall be entered the same as if the garnishee had answered according to such verdict or finding; *provided*, that if the verdict or finding be as favorable to the garnishee as his answer, he shall recover costs of the proceedings against the plaintiff, otherwise the plaintiff may recover costs against the garnishee.

Col., Mills' An. C. (1896) 128.

**3101. Third Person May Be Interpleaded—Notice—Proceedings.** When the answer of the garnishee shall disclose that any other person than the defendant claims the indebtedness or property in his hands, and the name and residence of such claimant, the court may, on motion, order that such claimant be interpleaded as a defendant to the garnishee action; and that notice thereof, setting forth the facts, with a copy of such order, in such form as the court direct, be served upon him, and that after such service shall have been made the garnishee may pay or deliver to the officer or the clerk such indebtedness or property and have a receipt therefor, which shall be a complete discharge from all liability to any party for the amount so paid or property so delivered. Such notice shall be served in the manner required for service of a summons in a civil action. Upon such service being made, such claimant shall be deemed a defendant to the garnishee action, and shall answer within ten days, setting forth his claim, or any defense which the garnishee might have made. In case of default, judgment may be rendered, which shall conclude any claim upon the part of such defendant.

N. Dak. (1895) 5397.

**3102. Garnishee May Deduct Sums Due Him by Either Party—Record.** Every garnishee shall be allowed to retain or deduct out of the property, effects, or credits of the defendant in his hands all demands against the plaintiff and all demands against the defendant of which he could have availed himself if he had not been summoned as garnishee, whether the same are at the time due or not, and he shall be liable for the balance only after all mutual demands between himself and plaintiff and defendant are adjusted, not including unliquidated damages for wrongs and injuries; *provided*, that the verdict or finding, as well as the record of the judgment shall show in all cases against which party, and the amount thereof, any counterclaim shall be allowed, if any shall be allowed.

Col., Mills' An. C. (1896) 130.

**3103. Garnishee Not Liable on Negotiable Instrument Not Due.** No person shall be liable as garnishee, by reason of having drawn, accepted, made, or indorsed any negotiable instrument, when the same is not due,

in the hands of the defendant at the time of service of the writ of garnishment.

Col., Mills' An. C. (1896) 131.

**3104. Judgment Acquits Garnishee for Amounts Paid.** The judgment against a garnishee shall acquit him from all demands by the defendant for all goods, effects, and credits paid, delivered, or accounted for by the garnishee by force of such judgment.

Col., Mills' An. C. (1896) 132.

**3105. Discharge of Garnishee Does Not Bar Action by Defendants.** If the person summoned as garnishee is discharged, the judgment shall be no bar to an action brought against him by the defendant for the same demand.

Col., Mills' An. C. (1896) 133.

**3106. Judgment Against Garnishee for Debt Not Due—Execution Deferred.** When the judgment is rendered against any garnishee, and it shall appear that the debt from him to the defendant is not yet due, execution shall not issue until the debt shall have become due.

Col., Mills' An. C. (1896) 134.

**3107. Property Pledged to Garnishee Delivered on Payment.** When any personal property, choses in action, or effects of the defendant in the hands of a garnishee are mortgaged or pledged, or in any way liable for the payment of a debt to him, the plaintiff may, under an order of the court for that purpose, pay or tender the amount due to the garnishee, and thereupon the garnishee shall deliver the personal property, choses in action, and effects to the sheriff, as in other cases.

Col., Mills' An. C. (1896) 135.

**3108. ID—If Held to Secure Performance, Plaintiff May Perform.** If the personal property or effects are held for any purpose other than to secure the payment of money, and if the contract, condition, or other thing to be done or performed is such as can be performed by the plaintiff without damage to the other parties, the court may make an order for the performance thereof by him, and upon such performance, or a tender of performance, the garnishee shall deliver the personal property and effects to the sheriff, as in other cases.

Col., Mills' An. C. (1896) 136.

**3109. ID—Disposal of Proceeds—Plaintiff Reimbursed.** All personal property, choses in action, and effects received by the sheriff under either of the two preceding sections shall be disposed of in the same manner as if they had been delivered by the garnishee without condition, except that the plaintiff shall, out of the proceeds thereof, be first repaid the amount paid by him to the garnishee for the redemption of the same, or shall be indemnified for any other act or thing by him done or performed, pursuant to the order of the court for the redemption of the same.

Col., Mills' An. C. (1896) 137.

**3110. Garnishee Liable for Contempt.** If any garnishee refuses or neglects to deliver any personal property, choses in action, or effects in his hands, when thereto lawfully required by the court, he shall be liable to be attached or punished for contempt.

Col., Mills' An. C. (1896) 138.

**3111. Costs Taxed in Discretion of Court—Garnishee Paid Witness Fee.** The court may order the costs of the proceedings in any garnishment to be paid by the plaintiff, or out of the effects or credits garnished, or by the garnishee, or may apportion the same as shall appear to be just and equitable. The garnishee shall be entitled to fees and mileage as a witness where he does not improperly resist or make costs.

Col., Mills' An. C. (1896) 139.

3112. **Garnishment After Judgment—Procedure—Liberal Construction.** Any person having a judgment remaining unsatisfied in any court of record in the State, upon which execution has been issued and delivered, and which remains in the hands of the proper officer uncollected and unsatisfied, may have a writ of garnishment issued, and thereupon attach the credits, effects, debts, choses in action, and other personal property of the judgment debtor in the possession or under the control of any third person as garnishee, for the security of such judgment, and all rights, remedies, and proceedings under this chapter are hereby made specially available and applicable for the relief and security of such judgment creditor, the same as for a plaintiff in attachment, and the same are also made specially available and applicable for the protection and security of the judgment debtor and the garnishee, the same as for the defendant and garnishee in attachment; and the forms of all affidavits, interrogatories, writs, answers, oaths, orders, trials, judgments, and other process and proceedings hereinbefore provided for cases of garnishment before judgment, with appropriate variations, shall apply to cases of garnishment after judgment; and all courts shall be liberal in allowing amendments, and in construing this chapter as to promote the objects thereof.

Col., Mills' An. C. (1896) 140.

3113. **New Trials and Appeals as in Other Cases.** Motions for new trial may be made in the same time and manner and shall be allowed for the same grounds in garnishment proceedings as in other civil trials; and appeals may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases.

Col., Mills' An. C. (1896) 141.

**Remedy by Appeal.** Where defendant had right of appeal and the time in which garnishee could appeal had not expired at the time of application for writ of prohibition, the appellant had an adequate remedy at law and the proceedings and writ were properly dismissed.

Overland M. Co. v. McMaster, 19 U. 177; 56 P. 977.

3113x. **Salaries of Public Officers or Employees Subject to Garnishment.** The State of Utah, or any county, city, town, district, board of education, or other subdivision of the State, or any officer, board, or institution, or either of the same having in possession or under control any credits or other personal property of, or owing any debt to the defendant in any action, whether as salary or wages, as a public official or employee, or otherwise, shall be subject to attachment, garnishment, and execution under such rights, remedies, and procedure as are or may be made applicable by statute to attachment, garnishment, and execution, respectively, in other cases, except as hereinafter provided.

'05, p. 113.

**Salaries of Public Officers not subject to levy, etc., prior to this enactment.**

Chamberlain v. Watters, 10 U. 298; 37 P. 566;

Van Cott v. Pratt, 11 U. 209; 39 P. 827.

**Nor could the municipality waive its right to exemption from garnishment, etc.**

Van Cott v. Pratt, 11 U. 209; 39 P. 827.

3113x1. **ID—Process—Upon Whom Served—Answer Conclusive.** The process shall be served only upon the auditor of the legal subdivision garnisheed, and in case there is no auditor, then on the clerk of the county, city, town, district, board of education, or other subdivision of the State, or board, or institution, or either of the same, and the answer of such auditor or clerk shall be final and conclusive, and the truth of such answer shall not be subject to further examination or proceedings of any kind.

'05, p. 113.

409. **Foreign Company—Attorney—Statements.** Any company desiring to transact any business by any agent or agents in this State must appoint one attorney in this State, and must file with the Secretary of State a written instrument, duly signed and sealed, authorizing such attorney of such corporation to acknowledge service of process for and in behalf of such company in this State, consenting that such service of process, mesne or final upon such attorney, shall be taken and held as valid as if served upon the company, and shall also file with the Secretary of State a certified copy of its charter or articles of incorporation and by-laws, with amendments thereto, together with a statement under oath of the company, showing the same facts as are required to be set forth in the annual statements of insurance companies doing business in this State; such statement shall also show to the full satisfaction of the Secretary of State that said company, if organized without the United States of America, has deposited in some one of the United States or Territories a sum not less than \$200,000 for the special benefit or security of the insured therein, and shall file also a copy of the last annual report, if any, made under any law of the State, Territory or foreign country by which such company was incorporated.

#### WASHINGTON Garnishments

680. (5390). **Writ—Grounds for Issuance of.** The clerks of the Superior Courts in the various counties in the State may issue writs of garnishment returnable to their respective courts in the following cases:

1. Where an original attachment has been issued in accordance with the statutes in relation to attachments.

2. Where the plaintiff sues for a debt and makes affidavit that such debt is just due, and unpaid, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

3. Where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have a writ of garnishment issued.

681. (5391). **Bond to Be Executed—When.** In the case mentioned in subdivision 2 of the preceding section the plaintiff shall execute a bond with two or more good and sufficient sureties, to be approved by the clerk issuing the writ, payable to the defendant in the suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment.

682. (5392). **Application for—Affidavit.** Before the issuance of the writ of garnishment the plaintiff or some one in his behalf shall make application therefor by affidavit, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his possession, or under his control, personal property or effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

683. (5393). **Writ—When and How Issued.** When the foregoing requisites have been complied with, the clerk shall docket the case in the name of the plaintiff, as plaintiff, and of the garnishee as defendant, and shall immediately issue a writ of garnishment directed to the garnishee, commanding him to appear before the court from which it is issued within twenty days after the service of the writ upon him, if the same be served upon him within the county in which the same is issued, or within thirty

days if served in any other county in this State, and to answer on oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what personal property or effects, if any, of the defendant he has in his possession or under his control, or had when such writ was served.

**684. Writ Against Incorporated Companies—How Served.** Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer, upon oath, what number of shares, if any, the defendant owns in such company, or owned when such writ was served.

**685. Writ—Form of.** Said writ may be substantially in the following form:

State of Washington, to A. B., Greeting:

Whereas, In the Superior Court of the State of Washington, in and for \_\_\_\_\_ county, in a certain case wherein C. D. is plaintiff and E. F. defendant, the plaintiff claiming an indebtedness against the said E. F. of \_\_\_\_\_ dollars, besides interest and cost of suit, has applied for a writ of garnishment against you;

Now, therefore, you are hereby commanded to be and appear before the said court within twenty days after the service upon you of this writ if served within \_\_\_\_\_ county, and within thirty days after the service of this writ upon you if served in any other county of this State, then and there to answer upon oath what, if anything, you are indebted to the said E. F., and were when this writ was served upon you, and what effects, if any, of the said E. F. you have in your possession or under your control, and had when this writ was served (and if the garnishee be an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein), then the writ shall proceed; and further, to answer what number of shares, if any, the said E. F. owns in such company, and owned when this writ was served upon you.

**686. Dating and Attestation.** The writ of garnishment shall be dated and tested (attested) in like manner as the writ of attachment, and the name and office address of the plaintiff's attorney shall be indorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon, and delivered by the clerk who issues it to the plaintiff, or his attorney.

**687. Service of.** The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives, or it may be served by any citizen of the State of Washington over the age of twenty-one years, and not a party to the action in which it is issued, in the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon showing the time, place and manner of service, and noting thereon his fees for making such service, and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer.

**688. Effect of Service.** From and after the service of such writ of garnishment it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects, nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any

sale or transfer of such shares, or interest, and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debts, effects, shares or interest as may be necessary to satisfy the plaintiff's demand.

**689. Bond to Discharge Writ.** If the defendant in the principal action cause a bond to be executed to the plaintiff with sufficient sureties, to be approved by the officer having the writ of garnishment, or after the return of said writ by the clerk of the court out of which said writ was issued, to the effect that he will perform the judgment of the court, the writ of garnishment shall, upon the filing of said bond with the clerk, be immediately discharged, and all proceedings had thereunder shall be vacated; provided, that the garnishee shall not be thereby deprived from recovering any costs in said proceeding to which he would otherwise be entitled under this act.

**690. Answer and Service of.** The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment, and shall be served upon the plaintiff or his attorney, and filed with the clerk of the Superior Court.

**691. Garnishee Discharged When.** Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession or under his control any personal property or effects of the defendant, and had not when the writ was served; and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of shares of stock or interested therein, if it shall further appear from such answer that the defendant is not, and was not when the writ was served, the owner of any of such shares or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, and within the time hereinafter provided, the court shall enter judgment discharging the garnishee.

**692. Judgment by Default—When.** Should the garnishee fail to make answer to the writ within the time prescribed therein, it shall be lawful for the court, and on or after the time to answer such writ has expired, to render judgment by default against such garnishee for the full amount claimed by plaintiff against the defendant, or in case plaintiff has a judgment against defendant for the full amount of such judgment with all accruing interest and costs.

**693. Judgment Against Garnishee—Enforcement of.** Should it appear from the answer of the garnishee, or should it be otherwise made to appear, as hereinafter provided, that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount shall exceed the amount of plaintiff's claim or demand against the defendant, with interest and costs, in which case it shall be for the amount of such claim or demand, interest and costs; provided, however, if it shall appear from the answer of the garnishee, and the same is not controverted, or if it shall appear from the trial hereinafter provided for that the garnishee is indebted to the principal defendant in any sum, but that such indebtedness is not matured and is not due and payable, the court shall make an order requiring the garnishee to pay such sum into court when the same becomes due, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the

amount of such indebtedness so admitted or found due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him for the amount of such indebtedness, which judgment shall have the same force and effect, and be enforced in like manner as other judgments provided for in this chapter; **provided further**, that if judgment shall be rendered against him in favor of the principal defendant, or if any judgment rendered against him be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be entered against him.

694. **Execution.** Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the clerk of the Superior Court from which such execution was issued, and in cases where judgment has been rendered against the defendant the amount made on the execution shall be applied to the satisfaction of the judgment, interests and costs against the defendant. In case judgment has not been rendered against the defendant at the time execution issued against the garnishee is returned, any amount made on said execution shall be paid to the clerk of the court from which such execution issued, who shall retain the same until judgment be rendered in the action between the plaintiff and defendant. In case judgment be rendered therein in favor of the plaintiff, the amount made on the execution against the garnishee shall be applied to the satisfaction of such judgment, and the surplus, if any there be, shall be paid to the defendant. In case judgment be rendered in such action in favor of the defendant, the amount made on said execution against the garnishee shall be paid to the defendant.

695. **Decree to Deliver Effects.** Should it appear from the garnishee's answer or otherwise that the garnishee has in his possession or under his control, or had when the writ was served, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff, on demand, such personal property or effects, or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in favor of the plaintiff against the defendant, such personal property or effects may be sold in like manner as any other property is sold upon an execution issued on said judgment. In cases where judgment has not been rendered in the principal action, the sheriff shall retain said personal property or effects in his possession until the rendition of judgment therein, and in case judgment is rendered in said principal action in favor of the plaintiff, said goods or effects, or sufficient of them to satisfy such judgment, may be sold in like manner as other property is sold on execution, by virtue of an execution issuing on said judgment. In case judgment shall be rendered in said action against the plaintiff, and in favor of the defendant, such effects and personal property shall be by the sheriff returned to the defendant; **provided**, however, that in cases where such effects or personal property are of a perishable nature, or the interests of the parties will be subserved by making a sale thereof before judgment, the court may order a sale thereof by the sheriff in like manner as sales upon execution are made, and the proceeds of such sale shall be paid to the clerk of the Superior Court, and like disposition shall be made of such proceeds at the termination of the action as would have been made of such personal property or effects under the provisions of this section in case such sale had not been made.

696. **Procedure on Failure of Garnishee to Surrender Effects.** Should the garnishee adjudged to have effects or personal property of the defendant in his possession or under his control, as provided in the (last) preceding article (section), fail or refuse to deliver them to the sheriff on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal, he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects.

697. **Sale of Shares of Stock—When.** Where the garnishee is an incorporated or joint stock company, and it appears by the answer or otherwise that the defendant is or was when the writ of garnishment was served, the owner of any shares of stock in such company or any interest therein, the court shall render a decree ordering the sale under execution in favor of the plaintiff, against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution.

698. **Sale—How Made.** The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the sheriff making such sales shall execute a transfer of such shares or interest to the purchaser with a brief recital of the judgment of the court under which the same was sold.

699. **Effect of Sale.** Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, or in such company, and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the sale had been made by the defendant himself.

700. **Plaintiff May Controvert Answer.** If the plaintiff should not be satisfied with the answer of the garnishee he may controvert the same by affidavit, in writing, signed by him, stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particulars he believes the same is incorrect.

701. **Defendant May Controvert Answer.** The defendant may also in like manner controvert the answer of the garnishee.

702. **Issue and Trial.** If the answer of the garnishee is controverted, as provided in the two preceding sections, an issue shall be formed, under the direction of the court, and tried as other cases; **provided**, however, no pleadings shall be necessary on such issue other than the affidavit of the plaintiff, the answer of the garnishee and the reply of the plaintiff or defendant controverting such answer, unless otherwise ordered by the court.

703. **Exemption of Wages and Family Necessaries.** Current wages or salary to the amount of one hundred dollars (\$100.00) for personal services rendered by any person having a family dependent upon him for support shall be exempt from garnishment, and where it appears upon the trial, or by answer of the garnishee, when not controverted as hereinafter provided, that the garnishee is indebted to the defendant for such current wages or salary for an amount not exceeding one hundred dollars (\$100.00), the garnishee shall be discharged as to such indebtedness; **provided**, that if the garnishment be founded upon a debt for actual necessities furnished to the defendant, or his family, or his dependents, no exemption shall be allowed in excess of ten dollars (\$10.00) out of each week's wages or salary, whether said wages or salary are paid, or to be paid, weekly, bi-

weekly, monthly or at other intervals, and whether there be due the defendant's wages for one week or a longer period; provided, however, that said exemption shall, in no event, be allowed out of wages or salary for a longer period than four (4) consecutive weeks; and, provided further, that no money due or earned as wages or salary shall be exempt from garnishment in lieu of any other property. The provisions of this section shall apply to actions in the Superior Court or before justice of the peace, and shall govern exemptions of wages or salary to the exclusion of all other statutes or parts of statutes.

704. **Costs and Attorney's Fees.** Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee for attorney's fees, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the judgment. Where the answer is controverted the costs shall abide the issue of such contest.

705. **Sufficiency of Answer Against Defendant.** It shall be a sufficient answer to any claim of the defendant against the garnishee, founded on any indebtedness of such garnishee, or on the possession by him of any personal property or effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein for the garnishee, to show that such indebtedness was paid, or such effects delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this chapter.

706. **Provisions Inapplicable to Justices of the Peace.** The provisions of this chapter shall not apply to actions and proceedings before justices of the peace, but garnishments shall be made in such actions and proceedings in the manner now provided by existing laws.

#### Garnishee Process by Officers

1807. **Affidavit for Garnishment.** Whenever any action shall have been commenced by summons upon contract, express or implied, or notice and complaint in a justice's court, if the plaintiff, or some one in his behalf, shall make and deliver to the officer having such summons, or notice and complaint, an affidavit stating that the affiant has good reason to believe that some person (naming him) is indebted to the defendant, or has personal property in his possession or under his control belonging to the defendant, or when there is more than one defendant, to any or either of them, not by law exempt from sale on execution, and demand such person, in writing, to appear before the justice on the return day of such summons, or notice and complaint, to answer touching his liability as garnishee.

1808. **Garnishee Summons.** The summons to the garnishee may be substantially as follows:

The State of Washington ) ss.  
County)

The State of Washington to

Whereas, a summons or notice and complaint has been issued by \_\_\_\_\_ a justice of the peace of said county, returnable on the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 18\_\_\_\_, in favor of \_\_\_\_\_, plaintiff, and against \_\_\_\_\_, defendant; and whereas, the plaintiff (or A. B. in his behalf) has made oath that you have property in your possession or under your control belonging to the defendant (or are indebted to him), now, therefore, you are hereby summoned to be and appear before the said justice at his office in said county on the return

day of said summons (or notice and complaint), at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon of said day, then and there to answer under oath, touching your liability as garnishee.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_,  
\_\_\_\_\_, Constable or Sheriff.

1809. **Service of.** The officer shall serve such summons on the garnishee personally and return the same, with the affidavit, to the justice at the same time that he shall make return of the service of the summons or notice and complaint, and state the day such summons was served on the garnishee.

1811. **Liability of Garnishee.** The garnishee, from the time of the service of such summons, shall stand liable to the plaintiff to the amount of the personal property, money, credits and effects in his hands, or under his control belonging to the defendant, and the amount of his own indebtedness to the defendant, then due or to become due, and not by law exempt from sale on execution.

1812. **Garnishee Action—When Deemed Commenced.** The service of the garnishee summons shall be deemed the commencement of an action against such garnishee, and upon the return of the constable that such summons has been duly served, the justice shall enter an action in his docket in which the plaintiff in the original action shall be plaintiff and the garnishee defendant.

1813. **Examination of Garnishee.** On the appearance of the garnishee before the justice, the affidavit aforesaid shall be deemed a sufficient complaint in this action, and the justice shall forthwith proceed to examine the said garnishee and his witnesses touching the matters alleged in the affidavit, and shall reduce the answers of said garnishee and his witnesses to writing, and file the same with the papers in the case; such examination may be adjourned by said garnishee as in case of adjournment in justice court in civil actions; provided, that in lieu of the personal appearance of the garnishee and his examination by the justice the garnishee may answer the affidavit and writ, in writing, in which case the answer shall be in writing, signed and verified by the garnishee, and make true answer to the several matters set up in the affidavit, and such answer shall be filed with the justice of the peace within the time required by the writ for the garnishee to appear.

1814. **Trial—When.** If the plaintiff shall not be satisfied with the answers of the garnishee, or if either party shall desire a trial, the justice shall enter the fact in his docket, and the case shall be proceeded with and tried upon the issue formed by the affidavit and answer, as in other actions commenced by summons, and if, upon the trial of any such issue property or effects shall be found in the hands of the garnishee, or it shall appear that such garnishee was indebted to the defendant, the justice shall assess the value thereof, and the garnishee may hold the same subject to the further order of the justice.

1815. **Defendant May Participate in Trial.** The defendant in the original action may appear and defend the proceedings against the garnishee upon the ground that the indebtedness of the garnishee, or any property held by him exempt from execution against such defendant, or for any other reason is not liable to garnishment, or upon any grounds upon which a garnishee might defend the same, and may participate in the trial of any issue between the plaintiff and the garnishee for the protection of his interests.

1816. **Costs.** If, in the action instituted against the garnishee the plaintiff shall be on suit, or if he discontinues his action, or, if upon the answer and trial of the issue between the plaintiff and garnishee no

property or effects shall be found in the hands of the garnishee, or nothing shall be found due from the garnishee to the defendant, or, if in the action against the principal defendant the plaintiff shall be non-suited or discontinue his action, or, if on the trial in such action nothing shall be found due from the defendant to the plaintiff, then in each of these cases the garnishee shall recover costs against the plaintiff, and no such costs shall be paid by the defendant.

**1817. Judgment Against Garnishee.** If the plaintiff recovers against the defendant in the original action, and the answer of the garnishee, when no issue is made thereon or the finding of the court or jury on an issue show the garnishee at the time of the service of the summons has property in his possession belonging to the defendant or that he was indebted to him, the justice shall enter an order in his docket requiring the garnishee, within ten days, to pay or deliver to the justice such property, or the amount of such indebtedness, or so much thereof as may be necessary to satisfy such judgment, with costs thereof, and the costs of the garnishee proceedings, or, if it appears from such answer or finding that the garnishee is to pay or deliver to the defendant any money or property in any other manner or at any other time than immediately, and at the time of service of summons, the same belonging to the defendant, then the order of the justice shall be that such payment or delivery be so made to the justice for the benefit of the plaintiff. If such garnishee shall pay such indebtedness, and deliver such property as directed by such order, the costs of the garnishee shall be paid out of the money or property received by the justice, unless the garnishee, upon an issue joined with him by the plaintiff, shall have been held liable in a greater amount of property or indebtedness than was disclosed in his answer. In which case he shall not have costs. And all property and effects, except money delivered to the justice, shall be by him ordered to be sold on the execution against the defendant.

**1818. Costs Against Garnishee.** If the garnishee does not deliver over the property or pay the money so found in his hands and belonging to the defendant, as provided in the preceding section, then judgment shall be given against him for the value of such property or money, and costs of suit in the cause in which he is garnishee, and no such costs shall be paid by the defendant.

**1819. Final Judgment—Negotiable Instrument.** No final judgment shall be rendered against the garnishee until final judgment be rendered against the defendant in the original action; but no judgment shall be rendered against a garnishee, or any money be required to be delivered by him to the justice upon any liability arising out of a debt due (evidenced) by negotiable paper, unless such paper is delivered or the garnishee completely exonerated or indemnified from all liability thereon after he may have satisfied the judgment.

**1820. Default, Etc., by Garnishee.** When a garnishee shall fail to appear, or appearing shall fail to make full answers upon oath to the interrogatories of the justice touching his liabilities as garnishee, the justice shall enter fact in his docket, and he shall be adjudged to be indebted to the defendant, and if judgment shall be rendered in favor of the plaintiff against the defendant, judgment in favor of the plaintiff shall be entered against such garnishee for the amount of the judgment against the defendant, and for all costs in the garnishee proceedings, and no such costs shall be paid by the defendant. The justice may continue the cause to some other day, if necessary, for further proceedings.

**1821. Appearance After Default.** If the garnishee shall have failed to appear at the proper time, he may afterwards appear and answer at

any time before final judgment against him, if he shall first pay all costs in the garnishee suit which have accrued up to that time, and when he shall so appear the justice shall cause the plaintiff to be notified so that he may be present at the examination.

**1822. Judgment in Bar.** In all actions brought by the defendant against the garnishee for the recovery of any property, credits, money or effects delivered up or paid by order of any judgment rendered under this chapter, except costs rendered against the garnishee, such judgment may be pleaded in bar, and the same shall be conclusive between such parties.

#### Writs of Garnishment by Justices

**1823. Relating to Garnishments in Justice Courts.** The justices of the peace in the various precincts in this State may issue writs of garnishment, returnable to their respective courts, where the plaintiff sues for a debt which is just, due and unpaid, or where the plaintiff has a judgment wholly or partially unsatisfied in the court from which he seeks to have the writ of garnishment issued.

**1824.** Before the issuance of the writ of garnishment, the plaintiff, or someone in his behalf, shall make application therefor by affidavit stating the facts authorizing the issuance of the writ, and that he has reason to believe and does believe that the garnishee is indebted to the defendant or that he has in his possession or under his control personal property or effects belonging to the defendant, or that the garnishee is a corporation and that the defendant is the owner of shares of the capital stock thereof, and that the garnishment applied for is not sued out to injure either the defendant or the garnishee.

**1825.** When the foregoing requisites have been complied with the justice of the peace shall, without additional fee, docket the case in the name of the plaintiff, as plaintiff, and of the garnishee as defendant, and shall immediately issue a writ of garnishment, directed to the garnishee, commanding him to appear before the justice who issues the writ, at a certain place, day and hour, which shall not be less than six nor more than twenty days from the date of the issuance of the writ, to answer on oath in what amount, if any, he was indebted to the defendant when such writ was served upon him, and what personal property or effects, if any, of the defendant he had in his possession or under his control when such writ was served upon him; and where it appears from the affidavit for the writ that the garnishee is a corporation in which the defendant is the owner of shares, the writ of garnishment shall further require the garnishee to answer what number of shares, if any, the defendant owned in such corporation when such writ was served upon it. The writ of garnishment shall be served at least five days before the time for answer mentioned therein.

**1826.** Said writ shall be substantially in the following form: The State of Washington, to..... Greeting:

Whereas, in the Justice Court in and for .....precinct, .....county, State of Washington, before..... justice of the peace, in a certain cause wherein..... is plaintiff, and..... is defendant, the plaintiff claiming an indebtedness (or having a judgment, as the case may be) against the said..... of.....dollars, besides interest and costs of suit, has applied for a writ of garnishment against you.

Now, therefore, you are hereby commanded to be and appear before the said justice at his office..... in said county, on the.....day of.....19.....at.....o'clock, in the.....noon of said day, then and there to answer upon oath in what amount, if any, you were indebted to the said.....when this writ was served upon you, and what personal property or effects, if any, of the said



.....you had in your possession or under your control when this writ was served upon you (and if the garnishee be a corporation, in which the defendant is alleged to be the owner of shares, then the writ shall proceed; and further to answer what number of shares, if any, the said.....owned in....., a corporation, when this writ was served upon you).

Dated this.....day of....., 19.....

#### Justice of the Peace.

**1827. How Issued.** The writ of garnishment shall be dated and signed by the justice of the peace, and the name and office address of the attorney for the plaintiff shall be indorsed thereon, or in case the plaintiff has no attorney, then the name and address of the plaintiff shall be indorsed thereon. The writ, when so issued and indorsed, shall be delivered by the justice of the peace who issued it to the party applying therefor, or to his attorney.

**1828. Service of Writ.** The writ of garnishment may be served by the sheriff or any constable of the county in which the garnishee lives, or it may be served by any citizen of the State of Washington over the age of twenty-one years and not a party to the action in which it is issued. In the same manner as a summons in an action is served. And in case such writ is served by an officer, such officer shall make his return thereon, showing the time, place and manner of service, and noting thereon his fees for making such service, and shall sign his name to such return. In case such service is made by any person other than an officer, such person shall attach to the original writ his affidavit showing his qualifications to make such service and the time, place and manner of making service, but no fee shall be allowed for the service of such writ unless the same is served by an officer.

**1829. Service Upon Bank as Garnishee.** In cases where the writ of garnishment, issued under the provisions of this act, is directed to a corporation carrying on a general banking business in the State of Washington, the plaintiff, in addition to serving the writ of garnishment upon said garnishee, shall, at the same time and as a part of said service, deliver to said garnishee a statement in writing, signed by the plaintiff or his attorney, stating the place of residence of the defendant and his business, occupation, trade or profession, and unless such statement is so delivered with said writ of garnishment the service of said writ shall not be deemed complete and the garnishee shall not be held liable thereon.

**1830. Effect of Service—Payment of Debt.** From and after the service of such writ of garnishment it shall not be lawful for the garnishee to pay to the defendant any debt owing to him at the time of such service, or to deliver to him any personal property or effects belonging to the defendant in his possession or under his control at the time of such service, nor shall the garnishee, if it be a corporation in which the defendant is alleged to be the owner of shares, permit or recognize any sale or transfer of any shares owned by said defendant at the time of such service; and any such payment, delivery, sale or transfer shall be void and of no effect as to so much of said debt, personal property or effects or shares as may be necessary to satisfy the plaintiff's demand.

**1831. Bond to Release Garnishee.** If the defendant in the principal action causes a bond to be executed to the plaintiff, with sureties, to be approved by the justice of the peace issuing the writ, conditioned that he will pay any judgment that may be rendered against him in favor of the plaintiff in said action and shall file said bond with said justice of the peace, the writ of garnishment shall, upon the filing and approval of said

bond, be immediately discharged, and all proceedings had thereunder shall be vacated, and said justice shall issue and deliver to said defendant a certificate to the effect that said writ of garnishment has been discharged, and upon the delivery of said certificate to the garnishee he shall be discharged of any further liability under said writ; provided, that the garnishee shall not be thereby deprived from recovery of costs in said proceeding to which he would otherwise be entitled under this act.

**1832. Answer of Garnishee.** The answer of the garnishee shall be in writing, and signed and verified as other pleadings, and shall make true answers to the several matters inquired of in the writ of garnishment, and shall be served upon the plaintiff or his attorney and filed with the justice of the peace who issued said writ.

**1833. Discharge of Garnishee.** Should it appear from the answer of the garnishee that he was not indebted to the defendant when the writ of garnishment was served upon him and that he had not in his possession or under his control any personal property or effects of the defendant when the writ was served; and when the garnishee is a corporation in which the defendant is alleged to be the owner of shares of stock, if it shall further appear from such answer that the defendant was not the owner of any such shares when the writ was served, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

**1834.** Should the garnishee fail to answer the writ by the time prescribed therein, the court shall, upon application of the plaintiff therefor, declare and enter the default of the garnishee, and shall thereafter render judgment as follows:

In case the plaintiff has a judgment against the defendant, judgment shall be rendered against the garnishee for the full amount of such judgment with all accruing interest and costs.

In case judgment has not been rendered in the principal action at the time when the default of the garnishee is declared and entered, final judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered; and if the plaintiff recovers judgment against the defendant, the court shall enter judgment against the garnishee for the full amount of the judgment awarded to the plaintiff against the defendant, but if the plaintiff fails to recover judgment against the defendant the garnishee shall be discharged without costs.

**1835. Judgment Against Garnishee—Satisfaction.** Should it appear from the answer of the garnishee, or should it be otherwise made to appear as hereinafter provided that the garnishee was indebted to the defendant in any amount when the writ of garnishment was served upon him, the court shall render judgment for the plaintiff against such garnishee for the amount so admitted or found to be due from the garnishee, less the amount of the costs awarded to the garnishee, unless the amount so admitted or found to be due shall exceed the amount of the judgment rendered or thereafter rendered in favor of the plaintiff against the defendant with interest and costs, in which case it shall be for the amount of such judgment rendered or thereafter to be rendered, with interest and costs; provided, however, that judgment shall not be rendered against the garnishee until the final judgment in the principal action is entered, and if the plaintiff fails to recover judgment against the defendant the garnishee shall be discharged and shall have and recover his costs against plaintiff; provided, however, if it shall appear from the answer of the garnishee and the same is not controverted, or if it shall appear from the trial hereinafter provided for that the garnishee was indebted to the defendant in any sum at the time of the service of said writ, but that said indebtedness is not matured and is not due and payable, the court shall

make an order requiring the garnishee to pay such sum into court when the same becomes due, less the amount of the costs awarded to the garnishee, the date when such payment is to be made to be specified in said order, and in default thereof that judgment shall be entered against the garnishee for the amount of such indebtedness so admitted or found to be due. In case the garnishee shall pay said sum at the time specified in said order, said payment shall operate as a discharge, otherwise judgment shall be entered against him as above provided; **provided further**, that if judgment shall be rendered in favor of the principal defendant, or if any judgment rendered against him shall be satisfied prior to the date of payment specified in said order, the garnishee shall not be required to make the payment hereinbefore provided for, nor shall any judgment in such case be against him.

**1836. Execution Against Garnishee.** Execution may be issued on the judgment against the garnishee herein provided for in like manner as upon any other judgment. The amount made upon any such execution shall be paid by the officer executing the same to the justice of the peace from whom such execution was issued; and shall be applied to the satisfaction of such judgment interest and costs, and also to the satisfaction of the judgment against the defendant, and the surplus, if any, shall be paid to the garnishee.

**1837. Garnishee in Possession of Property—Surrender—Custody.** Should it appear from the answer of the garnishee, or should it be made otherwise to appear, as hereinafter provided, that the garnishee had in his possession or under his control when the writ was served upon him, any personal property or effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the justice on demand, such personal property or effects, or so much of them as may be necessary to satisfy the plaintiff's claim. In cases where a judgment has been rendered in the principal action, such personal property or effects may be sold in like manner as other property is sold upon execution on a judgment. In cases where judgment has not been rendered in the principal action the justice of the peace shall retain such personal property or effects in his possession until the rendition of the judgment therein, and in case judgment is entered in such principal action in favor of the plaintiff, said goods, or effects, or sufficient of them to satisfy said judgment, may be sold in like manner as other property is sold upon an execution issued on a judgment. In case judgment shall be rendered in such action against the plaintiff and in favor of the defendant, such effects and personal property shall be by the justice returned to the defendant.

**1838. Attachment for Contempt.** Should the garnishee adjudge to have effects or personal property of the defendant in his possession or under his control, as provided in the preceding section, fail or refuse to deliver them to the justice on such demand, the garnishee shall, on motion of the plaintiff, be cited to show cause why he should not be attached for contempt of court for such failure or refusal, and should the garnishee fail to show some good and sufficient excuse for such failure and refusal he shall be fined for such contempt and imprisoned until he shall deliver such personal property or effects.

**1839. Corporation Garnishee—Shares of Stock Sold.** Where the garnishee is a corporation and it appears by the answer or otherwise that the defendant was, when the writ of garnishment was served upon it, the owner of any shares of stock in such corporation, the court shall render a decree ordering the sale under execution in favor of the plaintiff against the defendant of such shares of the defendant in such corporation, or so much thereof as may be necessary to satisfy such execution.

**1840. Sales, How Conducted.** The sale so ordered shall be conducted in all respects as other sales of personal property under execution, and the officer making such sale shall execute a transfer of such shares to the purchaser with a brief recital of the judgment of the court under which the same was sold.

**1841. Title on Sale.** Such sale shall be valid and effectual to pass to the purchaser all the right, title and interest which the defendant had in such shares of stock, and the proper officers of such company shall enter as if the sale had been made by the defendant himself.

**1842. Controverting the Answer of the Garnishee—Trial.** If the plaintiff should not be satisfied with the answer of the garnishee, he shall state such fact to the justice of the peace, who shall thereupon enter the fact in his docket, and an issue shall be formed under the direction of the court and such issue other than the affidavit of the plaintiff, the answer of the garnishee and the statement of the plaintiff that he is not satisfied with the answer.

**1843. Attorney's Fees—Costs.** Where the answer is controverted and the garnishee is subsequently discharged upon the trial thereof, his costs, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the plaintiff; and if the garnishee upon his answer being controverted by the plaintiff is held liable to an extent greater than the liability admitted in his answer, the costs of the plaintiff upon such proceeding, including a reasonable attorney's fee to be fixed by the court, shall be taxed against the garnishee.

**1844. Garnishee's Defense Against Defendant.** It shall be a sufficient answer against any claim of the defendant against the garnishee founded on any indebtedness of such garnishee or upon the possession by him of any personal property or effects, or where the garnishee is a corporation in which the defendant was the owner of shares of stock, for the garnishee to show that such indebtedness was paid or such shares of stock were sold under judgment of the court in accordance with the provisions of this act.

**1845. Garnishee's Answer—Identity of Names, How Determined—Trial.** Where the garnishee in his answer states that he was indebted or had time of the service of the writ of garnishment upon him to a person of the same or similar name to the defendant, and stating the place of business or residence of said person, and that he does not know whether or not such person is the same person as the defendant, and prays the court to determine whether or not the person to whom he was indebted or whose personal property or effects he had in his possession is the same person as the defendant, the court, before rendering judgment against the garnishee defendant as hereinbefore provided, shall take proof as to the identity of said persons, and if he should find therefrom that they are not the one and the same individual, the garnishee shall be discharged and shall have and recover his costs against the plaintiff; and if he should find that said persons are one and the same individuals, he shall make a similar judgment as to the payment of the money or the delivery of personal property and effects and as to costs of the garnishee as is hereinbefore provided, where the garnishee is held upon his answer. Before any such hearing on the question of identity is had, the plaintiff shall cause the justice of the peace to issue a citation directed to the person to whom the garnishee answers he was indebted or whose personal property or effects the garnishee has answered he had in his possession or under his control, commanding him to appear before the justice of the peace from which it is issued within

ten days after the service of the same upon him, and to answer on oath whether or not he is the same person as the defendant in said action. Said citation shall be dated and attested in like manner as a writ of garnishment and be delivered to the plaintiff or his attorney and shall be served in the same manner as a summons in an action is served. If upon the hearing in this section provided for, the court shall find that the defendant or judgment debtor is the same person as the person to whom the garnishee defendant had been indebted, or whose personal property or effects said garnishee defendant had in his possession or under his control, it shall be sufficient answer to any claim of said person against the garnishee founded on any indebtedness of such garnishee or on the possession by him of any personal property or effects for the garnishee to show that such indebtedness was paid or such personal property or effects delivered under the judgment of the court in accordance with the provisions in this act.

1846. **Answer of Garnishee—Defenses of Defendant—Exemptions.** It shall not be necessary for the garnishee to plead or set forth in his answer any defense which the defendant might have to the cause of action against him, nor to plead or set forth in his answer any claim of exemption which may be available to the defendant, but this section shall not be construed to preclude the defendant from pleading, claiming or asserting any exemption which may be available to him under the laws of the State of Washington now in force or hereafter to be enacted.

#### CHAPTER 308.

#### PROCEEDINGS IN AID OF EXECUTION

##### ARTICLE I.

##### By Civil Action

4786. **When to Proceed Against Equitable Assets.** When a judgment debtor has not personal or real property subject to levy on execution sufficient to satisfy the judgment, any equitable interests which he has in real estate, as mortgagor, mortgagee, or otherwise, or any interest he has in any banking, turnpike, bridge or other joint stock company, or in any money contract, claim or chose in action, due or to become due to him, or in any judgment or order, or any money, goods or effects which he has in the possession of any person, or body politic or corporate, shall be subject to the payment of the judgment by action.

(R. S. O., 5464; R. S. 1887, 2812; R. S. 1899, 3932);

Scholoredt v. Boyden, 9 Wyo. 395, 6 Pac. 225;

First Nat. Bank v. Cook, 12 Wyo. 523, 76 Pac. 674, 78 Pac. 1083, 2 L. R. A. (N. S.) 1012;

General Principles—Clark v. Strong, 6 O. 317;

Platt v. St. Clair, 6 O. 227;

Cadwalader v. Gran. Abk. Soc., 11 O. 292;

Douglas v. Huston, 6 O. 156;

Stone v. Elliott, 11 O. S. 252;

Gibson v. Dougherty, 11 O. S. 255.

**When Action Will Lie**—Gormley v. Potter, 29 O. S. 597;

Hamson v. Summer, 18 O. 444;

Newark v. Funk, 15 O. S. 462;

Warner v. Callender, 20 O. S. 190;

Boltz v. Stoitz, 41 O. S. 540.

**When Action Will Not Lie**—Hubbell v. Perrin, 3 O. 287;

Boalt v. Williams, 18 O. 13.

##### ARTICLE III.

4794. **Procedure.** Whenever an execution from any court of this State shall be placed in the hands of a proper officer for service, if there be not sufficient property of the judgment debtor found to satisfy such execution, the officer holding the execution shall, upon the demand of the judgment creditor, his agent, or attorney, summon in writing as garnishee or garnishees, such person or persons as may be named to him by the judgment creditor, his agent, or attorney, to appear before the court from which such execution issued on a certain day and at a certain hour to be specified in said summons, to answer such interrogatories as may be propounded to him touching his or their liability as garnishee or garnishees. And like proceedings shall be had thereon to final judgment and execution as upon suits instituted by attachment in the court from which such execution issued. (L. 1901, ch. 95, § 1.)

4802. **Examination of Judgment Debtor's Debtor.** After the return of an execution against the property of a judgment debtor, or of one of several debtors in the same judgment, and upon proof, in writing, by affidavit, or otherwise, to the satisfaction of the judge that a person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation or any officer or member of the corporation to appear at a specified time and place within the county in which such person or corporation is served with the order and answer concerning the same; the service of the order shall bind the property in the possession or under the control of such person or corporation from the time of service; and the person or corporation so served with the order shall be liable to the judgment creditor for all property, money and credits in his hands belonging to the judgment debtor, or due to him from such person or corporation from the time of service; but if, on the filing of the affidavit of the judgment creditor, his agent or attorney, the judge is satisfied of the existence of any of the grounds upon which an order of attachment may be issued, as provided in 4805, the order may be issued before the issue and return of the execution; and the judge may also require notice of such proceeding to be given to any party in the action in such manner as may seem to him proper. (R. S. O., 5475; R. S. 1887, 2823; R. S. 1899, 3943.)

Scholoredt v. Boyden, 9 Wyo. 396, 64 Pac. 225;

Union Bank v. Union Bank, 6 O. S. 225;

Welch v. Pittsburg, Ft. W. & C. R. R. Co., 11 O. S. 569;

In re Conkin 5 C. C. 78, 83.

4809. **Debtor May Pay Execution Against Creditor.** After the issue of execution against property, a person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution; and the sheriff's receipt shall be sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution. (R. S. O. 5482; R. S. 1887, 2830; R. S. 1899, 3950.)

#### CHAPTER 310.

##### ATTACHMENT.

Article I. Grounds of Attachment.

Article II. How Attachment Obtained.

Article III. Execution and Return Thereof.

Article IV. Disposition of Attached Property.

Article V. Proceedings Upon Attachment.

Article VI. General Provisions.

## ARTICLE I.

## Grounds of Attachment

4847. **Causes of Attachment in Civil Action.** In a civil action for the recovery of money the plaintiff may at or after the commencement thereof, have an attachment against the property of the defendant upon the grounds herein stated:

1. When the defendant or one of the several defendants is a foreign corporation or a non-resident of Wyoming, or is about to become a non-resident thereof; or
  2. Has absconded with intent to defraud his creditors; or,
  3. Has left the county of his residence to avoid the service of a summons; or,
  4. So conceals himself that a summons can not be served upon him; or,
  5. Is about to remove his property or a part thereof out of the jurisdiction of the court with intent to defraud his creditors; or
  6. Is about to convert his property or a part thereof into money for the purpose of placing it beyond the reach of his creditors; or,
  7. Has property or rights in action which he conceals; or,
  8. Has assigned, removed, disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud his creditors;
  9. Has fraudulently or criminally contracted the debt, or incurred the obligation, for which suit is about to be or has been brought.
- (R. S. O., 5521; R. S. 1887, 2869; L. 1890, ch. 14; R. S. 1899, 3988.)
- First Nat. Bank v. Swan, 3 Wyo., 356, 23 Pac. 742;  
Smith Drug Co. v. Casper Drug Co., 5 Wyo. 510, 40 Pac. 979;  
Collins v. Stanley, 15 Wyo. 282, 88 Pac. 621.
- When Attachment Lies**—Goble v. Howard, 12 O. S. 165;  
Sturtevant v. Tuttle, 22 O. S. 111;  
Dean v. Yates, 22 O. S. 388;  
Byers v. Schluppe, 51 O. S. 500, 38 N. E. 117.
- When Attachment Does Not Lie**—Hoyman v. Beverstock, 8 C. C. 473;  
Cowdin v. Hereford, 4 O. 132;  
Taylor v. McDonald, 4 O. 149;  
Stone v. Bank, 8 C. C. 636.

## ARTICLE II.

## How Attachment Obtained

4848. **Affidavit for Attachment.** An order of attachment shall be made by the clerk of the court in which the action is brought in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing:

1. The nature of the plaintiff's claim;
  2. That it is just;
  3. The amount which the affiant believes the plaintiff ought to recover; and,
  4. The existence of any one of the grounds for an attachment enumerated in the preceding section, or that the affiant has good reason to believe and does believe that some one or more of said grounds (stating which ones) exists. (R. S. O., 5322; R. S. 1887, 2870; R. S. 1899, 3989.)
- First Nat. Bank v. Swan, 3 Wyo. 356, 23 Pac. 743;  
Blythe & Fargo Co. v. Swenson, 7 Wyo. 303, 51 Pac. 873;  
Collins v. Stanley, 15 Wyo. 282, 88 Pac. 620.
- Affidavit**—Endel v. Liebrock, 33 O. S. 254;  
Dumleavy & Co., v. Chariz, 17 O. S. 640;  
Garner v. White, 23 O. S. 192;

Creasser v. Young, 31 O. S. 57;  
Sleet v. Williams, 21 O. S. 82;  
White v. Stanley, 29 O. S. 423.

**General Principles**—Sureties, Gans. v. Thompson, 11 O. S. 579;  
Putnam, Hooker & Co. v. Loeb & Schoenfeld, 2 C. C. 110.

4849. **Undertaking Required.** In no case shall the order of attachment be issued by the clerk until there is executed in his office, by sufficient surety of the plaintiff, to be approved by the clerk, an undertaking in a sum equal to double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment if the order prove to have been wrongfully obtained. (R. S. O., 5523; R. S. 1887, 2871; R. S. 1899, 3990.)

O'Farrell v. Stockman, 19 O. S. 296;  
Alexander v. Jacoby, 22 O. S. 358;  
McLain v. Simmington, 37 O. S. 334;  
Partridge v. Jones, 38 O. S. 375;  
Bradley v. Wacker, 13 C. C. 532.

4850. **Order of Attachment.** The order of attachment shall be directed and delivered to the sheriff, and shall require him to attach the lands, tenements, goods, chattels, stocks or interests in stocks, rights, credits, money and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action. (R. S. O., 5524; L. 1895, ch. 4, P. S. 1899, 3991.)

Endel v. Liebrock, 33 O. S. 254;  
Carty v. Fenstermaker, 14 O. S. 457;  
Bank v. Ry. Co., 21 O. S. 221;  
Owen v. Miller, 10 O. S. 136;  
Shorten v. Drake, 38 O. S. 76;  
Norton v. Norton, 43 O. S. 509, 3 N. E. 348.

4851. **Several Orders May Be Issued.** Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court. (R. S. O., 5525; R. S. 1887, 2873; R. S. 1899, 3992.)

Dobson v. Westheimer, 5 Wyo. 34, 36 Pac. 626.

4852. **When Returnable.** The return day of the order of attachment, when the order is issued at the commencement of the action, shall be the same as that of the summons; and when issued afterward, it shall be twenty days after it issued. (R. S. O., 5526; R. S. 1887, 2874; R. S. 1899, 3993.)

Liebman v. Ashbaker, 36 O. S. 94.

## ARTICLE III.

## Execution and Return Thereof.

4853. **Order of Executing Different Attachments.** When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff. (R. S. O., 5527; R. S. 1887, 2875; R. S. 1899, 3994.)

Siebert v. Switzer, 35 O. S. 661.

4854. **Manner of Execution.** The sheriff shall execute the order of attachment without delay; he shall go to the place where the defendant's property is, and there, in the presence of two householders of the county, declare that, by virtue of the order, he attaches the property at the suit of the plaintiff; the officer, with the householders, who shall first be sworn

by the officer, shall make a true inventory and an appraisal of all the property attached, which shall be signed by the officer and householders, and returned with the order; when the property attached is real property, the officer shall leave with the occupant thereof, or, if there is no occupant, in a conspicuous place thereon, a copy of the order; and when it is personal property, and can be come at, he shall take it into his custody, and hold it subject to the order of the court. (R. S. O. 5528; R. S. 1887, 2876; R. S. 1899, 3995.)

First Nat. Bank v. Moorcroft Ranch Co., 5 Wyo. 54, 36 Pac. 821;  
State ex rel Bank v. Dist. Ct., 5 Wyo. 231, 39 Pac. 749;  
Dawson v. Holcomb, 1 O. 275;  
Nat. Bank v. Lake Shore & M. S. R. R., 21 O. S. 221;  
Root v. R. R. Co., 45 O. S. 222, 12 N. E. 812;  
N. Y. Rubber Co. v. Gandy Belting Co., 11 C. C. 618, 624.

**4855. Forthcoming Bond—Custody of Property.** The sheriff shall deliver the property attached to the person in whose possession it was found, upon his execution by such person, in the presence of the sheriff, or an undersheriff, to the plaintiff, with sufficient surety resident in the county, to the effect that the parties to the same are bound in double the appraised value of the property, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it appear to the court that any part of such property has been destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound. (R. S. O., 5529; R. S. 1887, 2877; R. S. 1899, 3996.)

Rutledge v. Corbin, 10 O. S. 478;  
Alexander v. Jacoby, 23 O. S. 358;  
Hartwell v. Smith, 15 O. S. 200;  
Saxton v. Plymire, 3 C. C. 212;  
Keith v. Moore, 3 C. C. 432.

**4856. Affidavit of Garnishment.** When the plaintiff, his agent or attorney, makes oath, in writing, that he has good reason to believe and does believe that any person or corporation in the affidavit named, is indebted to the defendant, or has property of the defendant in his possession, describing the same, if the officer can not get possession of such property, or obtain the money due on account such indebtedness, he shall leave with such garnishee a copy of the order of attachment, and a written notice that he appear in court and answer as provided in 4873, and if the garnishee does not reside in the county in which the order of attachment was issued, the process may be served by the proper officer of the county in which the garnishee resides, or may be personally served. (L. 1895, ch. 14; R. S. 1899, 3997.)

Whitman v. Keith, 18 O. S. 131;  
Conley v. Chilcote, 25 O. S. 320;  
Myers v. Smith, 29 O. S. 120;  
Railroad v. Peoples, 31 O. S. 537;  
Kinsley v. Evans, 34 O. S. 158;  
Norton v. Norton, 42 O. S. 509, 3 N. E. 348;  
Alsford v. Reed, 45 O. S. 653, 17 N. E. 73.

**4857. Garnishment of Public Officers.** The service of process of garnishment upon the sheriff, coroner, clerk, constable, master commissioner, marshal of a municipal corporation or other officer having in his possession or under his control any money, claim, or property of defendant or in which the defendant has an interest, shall bind the same from the time of such service and shall be a legal excuse to such officers, to the extent of the demand of the plaintiff, for not paying such money or delivering such claims or property to the defendant as by law or the terms of the process in his

hands he would otherwise be bound to do. (R. S. O. 5531; R. S. 1887, 2879; R. S. 1899, 3998.)

Dawson v. Holcomb, 10, 275;  
Locke v. Butler, 19 O. S. 587.

**4858. Answer and Examination of Garnishee.** The answer of the garnishee if he resides out of the county shall be made before the clerk of the district court of the county in which he resides, or if he resides out of the State, before the clerk of the district court of the county where he was served or where the action is pending; a special examination of the garnishee shall be had, and actions against him under 4877 shall be brought in the county in which he resides. (R. S. O. 5532; R. S. 1887, 2880; R. S. 1899, 3999.)

Whitman v. Keith, 18 O. S. 134;  
Souair & McDonald v. Shea, 26 O. S. 650;  
Conley v. Chilcote, 25 O. S. 320;  
Myers v. Smith, 29 O. S. 120.

**4859. Transmission of Answer of Garnishee.** The clerk of the district court before whom the answer is made shall transmit the same to the clerk of the court in which the suit is pending, in the same manner as depositions are required to be directed and transmitted, and shall receive for his services such fees as are allowed by law for taking depositions, and to clerks for furnishing certificates, with their seals of office depositions, and if the garnishee admit an indebtedness to the defendant and the court order the payment of the same or any part thereof to the plaintiff, and the garnishee fail to pay the same according to such order, execution may issue thereon as upon judgments for the payment of money. (R. S. O. 5533; R. S. 1887, 2881; R. S. 1899, 4000.)

Rice & Barnett v. Whitney, 12 O. S. 358, 359;  
Secor v. Witter, 39 O. S. 219.

**4860. Garnishee—How Served.** If the garnishee is a person, the copy of the order and notice shall be served upon him personally or left at his usual place of residence, and if a corporation, they shall be left with the president or other principal officer, or the secretary, cashier or managing agent thereof, and if such corporation is a railroad company, they may be left with any regular ticket or freight agent thereof in any county in which the railroad is located. (R. S. O. 5534; R. S. 1887, 2882; R. S. 1899, 4001.)

Ry. v. Peoples, 31 O. S. 537.

**4861. Different Attachments on Same Property.** Different attachments of the same property may be made by the same officer, and one inventory and appraisal shall be sufficient, and it shall not be necessary to return the same with more than one order. (R. S. O. 5535; R. S. 1887, 2883; R. S. 1899, 4002.)

Harrison v. King, 9 O. S. 388;  
Ward v. Howard, 12 O. S. 158;  
Endel v. Lefbrock, 33 O. S. 254;  
Bailey v. Childs, 46 O. S. 557, 24 N. E. 598.

**4862. Subsequent Attachments—How Levied.** When the property is under attachment, attachments on the same under subsequent orders shall be as follows:

1. If it is real property, it shall be attached in the manner prescribed in 4854.

2. If it is personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment.

3. If a person be made a garnishee more than once with respect to the same indebtedness or liability, a copy of the order and notice shall be left him, in the manner prescribed in 4856. (R. S. O. 5536; R. S. 1887, 2884; R. S. 1899, 4003.)

## GARNISHMENT

4863. **Return of Officer.** The officer shall return upon every order of attachment what he has done under it, and the return must show the property attached, and the time it was attached; when garnishees are served, their names, and the time each was served, must be stated; and the officer shall return with the order all undertakings given under it. (R. S. O. 5537; R. S. 1887, 2885; R. S. 1839, 4004.)

Phillips v. Elwell, 14 O. S. 240;

Trust Co. v. Ins. Co., 12 O. S. 220.

4864. **When Property and Garnishee Bound.** An order of attachment shall bind the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property of the defendant in his hands, and money and credits due from him to the defendant from the time he is served with the written notice mentioned in § 856, but when property is attached in the hands of a consignee his lien thereon shall not be affected by the attachment. (R. S. O., 5538; R. S. 1887, 2886; R. S. 1839, 4005.)

Condee v. Webster, 9 O. S. 452;

Howe v. Hartness, 11 O. S. 443;

Armstrong v. McAlpin, 18 O. S. 184;

McCombs v. Howard, 18 O. S. 422;

Shorten v. Drake, 33 O. S. 76.

## ARTICLE IV.

## Disposition of Attached Property

4865. **Appointment of Receiver.** The court, or a judge thereof in vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath and give an undertaking, as provided in other cases. (R. S. O. 5539; R. S. 1887, 2887; R. S. 1839, 4006.)

McBride v. U. P. R. Co., 3 Wyo. 248, 21 Pac. 687;

Jenkins v. Jeffrey, 3 Wyo. 669, 29 Pac. 186;

New York Rubber Co. v. Gandy Belting Co., 11 C. C. 618.

4866. **Duties and Powers of Receiver.** The receiver shall take possession of all notes, due bills, books of account, and all other evidences of debt that have been taken by the sheriff or other officer as the property of the defendant in attachment, and shall proceed to settle and collect the same, and for that purpose he may commence and maintain actions in his own name as such receiver, but in such actions no right or defense shall be impaired or affected. (R. S. O., 5540; R. S. 1887, 2888; R. S. 1839, 4007.)

4867. **Notice of Appointment.** The receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment, which notice shall be written or printed, and shall be served on the debtor by copy personally, or by copy left at his residence, and, from the date of such service the debtor shall stand liable to the plaintiff in attachment for the amount of money and credits of the defendant in attachment in their hands, or due from them to him, and shall account therefor to the receiver. (R. S. O., 5541; R. S. 1887, 2889; R. S. 1839, 4008.)

4868. **Report of Receiver.** The receiver shall, when required, report his proceedings to the court, and hold all money collected by him, and property which may come into his hands, subject to the order of the court. (R. S. O., 5542; R. S. 1887, 2890; R. S. 1839, 4009.)

4869. **Attaching Officer May Act as Receiver.** When a receiver is not appointed, the officer who attaches the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name,

## GARNISHMENT

as such officer, and he may be required to give security other than his official undertaking. (R. S. O., 5543; R. S. 1887, 2891; R. S. 1839, 4010.)

4870. **Disposition of Attached Property.** The court, or a judge thereof in vacation, may make proper orders for the preservation of the property during the pendency of the suit, and may direct a sale of the property when, because of its perishable nature, or the cost of keeping it, a sale will be for the benefit of the parties; the sale shall be made in the manner and with such advertisement, and upon such terms of credit, with security, as the court or judge having regard to the probable duration of the action may direct; and the sheriff shall hold and pay over all proceeds of the sale collected by him, and all money received by him from garnishees under the same requirements and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail. (R. S. O., 5544; R. S. 1887, 2892; R. S. 1839, 4011.)

Carper v. Richards, 13 O. S. 219;

Brundred v. Rice, 46 O. S. 641, 22 N. E. 930.

4871. **Attachment May Be Discharged by Undertaking.** If the defendant or other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by sufficient surety resident in the county, to be approved by the court, in double the amount of the plaintiff's claim, as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment shall be discharged and restitution made of any property taken under it or the proceeds thereof, and such undertaking shall also discharge the liability of a garnishee in the action for any property of the defendant in his hands. (R. S. O., 5545; R. S. 1887, 2893; R. S. 1839, 4012.)

Myers v. Smith, 29 O. S. 120;

B. & O. R. R. Co. v. May, 25 O. S. 347;

Jayne v. Platt, 47 O. S. 262, 24 N. E. 262;

Johnston v. Oliver, 51 O. S. 36, N. E. 458;

Saxton v. Plymire, 3 C. C. 209.

4872. **Undertaking May Be Given in Vacation.** The undertaking mentioned in the preceding section may, in vacation, be executed in the presence of the officer having the order of attachment in his hands, or after the return of the order, before the clerk, with the same effect as if executed in court, the sureties in either case to be approved by the officer before whom the undertaking is executed. (R. S. O., 5546; R. S. 1887, 2894; R. S. 1839, 4013.)

Hartwell v. Smith, 15 O. S. 200.

4873. **Appearance and Answer of Garnishee.** The garnishee, if the order of attachment be returned during a term of court and twenty days returned during vacation he shall appear at that term, and if the order be returned during vacation he shall appear at the term next after its return and shall answer under oath all questions put to him touching the property of every description and credits of the defendant in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, whether due or not, and in the case of a corporation, any stock therein held by or for the benefit of the defendant at or after the service of the notice. (R. S. O., 5547; R. S. 1887, 2895; R. S. 1839, 4014.)

Norton v. Norton, 43 O. S. 509; 3 N. E. 348.

4874. **Payment of Money by Garnishee.** A garnishee may pay the money owing to the defendant by him to the officer having the order of attachment, or into court; he shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim, and shall not be subjected to costs beyond those caused by his resistance

of the claim against him, and if he disclose the property in his hands or the true amount owing by him and deliver or pay the same according to the order of the court, he shall be allowed his costs. (R. S. O., 5548; R. S. 1887, 2896; R. S. 1899, 4015.)

4875. **Attachment of Garnishee for Contempt.** If the garnishee fails to appear and answer as required by law, the court wherein the cause is pending may proceed against him by attachment as for contempt. (R. S. O., 5549; R. S. 1887, 2897; R. S. 1899, 4016.)

4876. **Disposition of Property in Hands of Garnishee.** If the garnishee appears and answers, and it be discovered on his examination that at or after the service of the order of attachment and notice upon him he was possessed of any property of the defendant, and was indebted to him either, the court may order the delivery of such property, and the payment of the amount owing by him into court, or either; or the court may permit the garnishee to retain the property, or the amount owing upon the execution of an undertaking to the plaintiff by sufficient surety, to the effect that the amount shall be paid, or the property forthcoming, as the court may direct. (R. S. O., 5550; R. S. 1887, 2898; R. S. 1899, 4017.)

4877. **Action Against Garnishee.** If the garnishee fails to appear and answer, or if he appear and answer, and his disclosure be not satisfactory to the plaintiff, or if he fail to comply with the order of the court to deliver the property and pay the money owing into court, or to give the undertaking required in the last section, the plaintiff may proceed against him by civil action, and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff for the amount of property and credits of every kind of the defendant in possession of the garnishee, and for what may appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. (R. S. O., 5551; R. S. 1887, 2899; R. S. 1899, 4018.)

Stanley v. Foote, 9 Wyo. 248, 251; 63 Pac. 940;

Whitman v. Keith, 18 O. S. 134;

Pope v. Ins. Co., 24 O. S. 481;

Squair v. Shea, 26 O. S. 645;

R. R. v. Peoples, 31 O. S. 537;

Alsdorf v. Reed, 45 O. S. 653, 17 N. E. 73;

Hammock v. Bank, 9 C. C. 139.

4878. **Costs in Such Action and Substitution of Parties.** If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, he shall pay costs of such action, and when the claim of the plaintiff in attachment is satisfied, the defendant may, on motion, be substituted as the plaintiff in the judgment. (R. S. O., 5552; R. S. 1887, 2900; R. S. 1899, 4019.)

Stanley v. Foote, 9 Wyo. 248, 251, 63 Pac. 940.

4879. **Judgment Against, and Discharge of, Garnishee.** Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment is determined; if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged, and recover costs; and if the plaintiff recover against the defendant in attachment, and the garnishee deliver up all the property and credits of the defendant in his possession, and pay all the money due from him as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and money so surrendered, or as the court deems right and proper. (R. S. O., 5553; R. S. 1887, 2901; R. S. 1899, 4020.)

Stanley v. Foote, 9 Wyo. 248, 63 Pac. 940;

Myers v. Smith, 29 O. S. 130;

Swasey v. Anstram & Co., 24 O. S. 87.

4880. **Attachment Discharged on Judgment for Defendant.** If judgment in the action be rendered for the defendant, the attachment shall be discharged and the property attached, or its proceeds shall be returned to him. (R. S. O., 5554; R. S. 1887, 2902; R. S. 1899, 4021.)

4881. **Sale of Attached Property.** If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the money arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title as may be necessary to satisfy the judgment, shall be sold by order of the court under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs; if there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue in all respects as in other cases, and any surplus of the attached property, or its proceeds, shall be returned to the defendant. (R. S. O., 5555; R. S. 1887, 2903; R. S. 1899, 4022.)

Lehman v. Ashbacher, 38 O. S. 94;

Close v. Sinclair, 38 O. S. 530;

Young v. Gerdes, 42 O. S. 102;

Claypoole v. Pone, 9 C. C. 309, 311.

4882. **Court May Compel Delivery of Property.** The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking has been given, and may proceed summarily on such undertaking to enforce the delivery of the property, or the payment of the money due upon the undertaking by rules and attachment as in cases of contempt. (R. S. O., 5556; R. S. 1887, 2904; R. S. 1899, 4023.)

4883. **May Order Sheriff to Repossess Himself.** The court may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which has passed out of his hands without having been sold or converted into money, and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment. (R. S. O., 5557; R. S. 1887, 2905; R. S. 1899, 4024.)

4884. **Claims of Third Persons to Attached Property.** If personal property which has been attached be claimed by any person other than the defendant, the officer shall have the validity of such claim tried, and if the proceedings must be had thereon with the like effect as if the property had been seized upon execution and claimed by a third person. (R. S. O., 5558; R. S. 1887, 2906; R. S. 1899, 4025.)

Stanley v. Foote, 9 Wyo. 248, 63 Pac. 940.

4885. **Reference of Questions of Priority.** When several attachments are executed on the same property, or the same person is made a garnishee by several parties, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments. (R. S. O., 5559; R. S. 1887, 2907; R. S. 1899, 4026.)

Stanley v. Foote, 9 Wyo. 248, 63 Pac. 940;

Putnam Hooker Co. v. Loeb & Schoenfeld, 2 C. C. 110.

#### ARTICLE VI.

##### General Provisions

4886. **Jurisdiction—When Obtained—No Abatement.** From the time of the issue of the order of attachment the court shall be deemed to have

acquired jurisdiction, and to have control of all subsequent proceedings under this chapter, and if, after the issue of the order the defendant, being a person, die, or being a corporation, its charter expire by limitation, forfeiture or otherwise, the proceedings shall be carried on; but in all such cases, other than where the defendant was a foreign corporation, the legal representatives of the defendant shall be made parties to the action. (R. S. O., 5560; R. S. 1887, 2908; R. S. 1899, 4027.)

Bacher v. Shawhan, 41 O. S. 271.

4887. **Further Security—When Required by Defendant.** The defendant may, at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff, and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from the State, or is not sufficient for the amount of the undertaking, it may vacate the order of attachment and direct restitution of any property taken under it, unless, in a reasonable time, to be fixed by the court, sufficient security be given by the plaintiff. (R. S. O., 5561; R. S. 1887, 2909; R. S. 1899, 4028.)

4888. **Motion to Discharge Attachment.** The defendant may, at any time before judgment, upon reasonable notice to the plaintiff, move to discharge the attachment as to the whole or any part of the property attached; and the motion may be heard and decided by the court at any term or regular session thereof, or it may be made, heard and decided by any judge thereof in vacation. (R. S. O., 5562; R. S. 1887, 2910; R. S. 1899, 4029.)

Werne v. France, 3 Wyo. 273, 21 Pac. 703;

First Nat. Bank v. Swan, 3 Wyo. 356, 23 Pac. 743;

First Nat. Bank v. Moorcroft Ranch Co., 5 Wyo. 50, 36 Pac. 821;

Bank v. Latham, 8 Wyo. 320, 57 Pac. 184;

Collins v. Stanley, 15 Wyo. 282, 88 Pac. 620;

Watson v. Sullivan, 5 O. S. 42;

Langdon v. Conklin, 10 O. S. 439;

R. R. Co. v. Peoples, 31 O. S. 537;

Garner v. White, 23 O. S. 193;

Harrison v. King, 9 O. S. 388;

Bancroft & Co. v. Talbot, 29 O. S. 538;

Bare v. Otto, 34 O. S. 11;

Smith v. Hoover, 39 O. S. 249;

Young v. Gerdes, 42 O. S. 102;

Bolling Mill Co. v. Bank, 57 O. S. 115, 48 N. E. 508.

4889. **Evidence Upon Motion to Discharge.** When the motion is made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to the evidence on which the order of attachment was made. (R. S. O., 5563; R. S. 1887, 2911; R. S. 1899, 4030.)

Werne v. France, 3 Wyo. 273, 21 Pac. 703;

First Nat. Bank v. Swan, 3 Wyo. 356, 23 Pac. 743;

Bank v. Latham, 8 Wyo. 320, 57 Pac. 184;

Collins v. Stanley, 15 Wyo. 282, 88 Pac. 620.

#### CHAPTER CXL

##### Attachment Before Debt Due

4890. **Grounds of Attachment.** A creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor:

1. When a debtor has sold, conveyed or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors

or to hinder or delay them in the collection of their debts; or,

2. Is about to make such sale, conveyance or disposition of his property, with such fraudulent intent; or,

3. Is about to remove his property or a material part thereof, with hindering or delaying them in the collection of their creditors, or of the defendant is about to become a non-resident of the State. (R. S. O., 5564; R. S. 1887, 2912; R. S. 1899, 4031.)

Crane v. Bode, 5 Wyo. 255, 39 Pac. 747;

Bolln v. Metcalf, 6 Wyo. 1, 42 Pac. 12, 44 Pac. 694;

Bank v. Latham, 8 Wyo. 317, 57 Pac. 184;

Stone v. Bank, 8 C. C. 636, 637.

4891. **Attachment Granted by Court—Affidavit.** The attachment authorized by the last section may be granted by the court in which the action is brought, or by a judge thereof; but before such action shall be brought, or such attachment granted, the plaintiff, or his agent, or attorney, shall make an oath in writing, showing the nature and amount of the plaintiff's claim, that it is just, when it will become due, and the existence of any one of the grounds for attachment enumerated in the last preceding section. (R. S. O., 5565; R. S. 1887, 2913; R. S. 1899, 4032.)

McBride v. U. P. R. Co., 3 Wyo. 248, 21 Pac. 687;

Bank v. Latham, 8 Wyo. 317, 57 Pac. 184;

Harrison v. King, 9 O. S. 388.

4892. **When Attachment Refused—Action Dismissed.** If the court or judge refuse to grant an order of attachment the action shall be dismissed, but without prejudice to a future action, and in all such actions applications for an attachment must be made. (R. S. O., 5566; R. S. 1887, 2914; R. S. 1899, 4033.)

4893. **Order Must Specify Amount.** The order of the court or judge granting the attachment shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action. (R. S. O., 5567; R. S. 1887, 2915; R. S. 1899, 4034.)

4894. **Undertaking Required.** The order of attachment, as granted by the court or judge, shall not be issued by the clerk until there is executed by 4849. (R. S. O., 5568; R. S. 1887, 2916; R. S. 1899, 4035.)

4895. **Action Continued Until Claim Is Due.** The plaintiff in such action shall not have judgment on his claim before it becomes due, and the proceedings on attachment may be conducted without delay. (R. S. O., 5569; R. S. 1887, 2917; R. S. 1899, 4036.)

Crane v. Bode, 5 Wyo. 255, 39 Pac. 747.

4896. **Application of Preceding Chapter.** Proceedings authorized by the next preceding chapter shall govern attachments under this chapter, so far as the same are applicable. (R. S. O., 5570; R. S. 1887, 2918; R. S. 1899, 4037.)

Crane v. Bode, 5 Wyo. 255, 39 Pac. 747;

Bolln v. Metcalf, 6 Wyo. 1, 44 Pac. 694;

Gans v. Thompson, 11 O. S. 579.

#### CHAPTER CL

##### Attachment and Garnishment

5215. **Causes for Attachment—Affidavit.** The plaintiff shall have a writ of attachment against the property of the defendant in a civil action before a justice of the peace, at the time or after the commencement



the writ, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just; if the claim shall be founded upon contract, express or implied, the amount which the affiant believes the plaintiff ought to recover of the defendant, after allowing all just credits, counterclaims or set-offs and the existence of some one or more of the following grounds of attachment:

First: When the defendant is a foreign corporation, or a non-resident of this State; or,

Second: Has absconded, or is about to abscond, from this State with the intent to defraud his creditors; or,

Third: Has left the county of his residence to avoid the service of a summons; or,

Fourth: So conceals himself that a summons can not be served upon him; or,

Fifth: Is about to remove his property, or a part thereof, out of the jurisdiction of the court with intent to defraud his creditors; or,

Sixth: Is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or,

Seventh: Has property, or rights in action, which he conceals; or,

Eighth: Has assigned, removed or disposed of, or is about to dispose of his property, or a part thereof, with the intent to defraud his creditors; or,

Ninth: Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has, been brought; or,

Tenth: That the cause of action sued on arises on a contract, express or implied, for the direct payment of money not exceeding in amount the sum of \$200.00, and that the contract is not secured by a mortgage or lien upon real or personal property, or pledge of personal property; or, if originally so secured, that such security has, without any act of the plaintiff, or the person to whom the security was given, become inadequate to secure said contract; provided, however, that in all cases where the attachment is issued pursuant to this, the tenth subdivision of 5315, the officer executing the writ of attachment and seizing the property of the defendant shall deliver the property attached to the defendant, upon the execution by such defendant, in the presence of the officer, of an undertaking to the plaintiff, with sufficient sureties, residents of the county, to be approved by the officer, to the effect that the parties to said undertaking are jointly and severally bound to the plaintiff in double the amount of the plaintiff's demand, and will pay to said plaintiff any judgment, which he, the said plaintiff, may recover in said action, together with the costs. The officer taking such undertaking shall forthwith return the same, with the writ of attachment, to the justice of the peace issuing the said writ, and said undertaking shall, by said justice, be filed in said cause and noted upon his docket and safely kept by him, and in the event that upon the trial of said cause, the plaintiff should recover judgment against the defendant, such judgment shall be rendered against the defendant and the sureties in such undertaking. (R. S. 1887, 3541; R. S. 1899, 4452; L. 1905, ch. 38.)

Cheeseman v. Fenton, 13 Wyo. 451, 86 Pac. 823.

5316. **Undertaking Required.** Before issuing the writ the justice shall require a written undertaking on the part of the plaintiff in a sum not less than fifty dollars in any case, and in double the amount claimed by the plaintiff, with sufficient surety, to the effect that if the defendant recover judgment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages which he may sustain by reason of the

attachment, not exceeding the sum specified in the undertaking. (R. S. 1887, 3542; R. S. 1899, 4453.)

5317. **Requisites of Writ.** The writ shall be directed to the sheriff or any constable of the county in which the writ is issued, and shall require him to attach and safely keep all the property of such defendant within his county, not exempt from execution, or so much thereof as may be sufficient to satisfy the demand of the plaintiff, the amount of which shall be stated in conformity with the affidavit, unless the defendant give him security by the undertaking of at least one sufficient surety in an amount sufficient to satisfy such demand, besides cost, in which case he shall receive such undertaking. (R. S. 1887, 3543; R. S. 1899, 4454.)

Cheeseman v. Fenton, 13 Wyo. 446, 86 Pac. 823.

5318. **What Property May Be Attached.** The right or shares which the defendant may have in the stock of any corporation or company, together with the interests and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution. (R. S. 1887, 3544; R. S. 1899, 4455.)

5319. **Manner of Executing Writ.** The officer to whom the writ is directed and delivered shall execute the same without delay, in the following manner, if the undertaking herein provided for be not given by the defendant:

1. Personal property capable of manual delivery shall be attached by taking it into custody.

2. Stock or shares, or interest in stock or shares of any corporation or company shall be attached by leaving with the president or other head of the same, or the secretary, cashier or agent thereof, a copy of the writ, and a notice stating the stock or interest of the defendant is attached in pursuance of such writ.

3. Debts and credits and personal property, not capable of manual delivery, shall be attached by leaving with the person owing such debts, or having in his possession, or under his control, such credits or other personal property, a copy of the writ and a notice, and that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control belonging to the defendant, are attached in pursuance of such writ. (R. S. 1887, 3545; R. S. 1899, 4456.)

Blanc v. Pay Master Mining Co. (Cal.), 30 Pac. 765;

Christman v. Dorsey (Colo.), 21 Pac. 921;

Rudolph v. Saunders, Constable (Cal.), 43 Pac. 619.

5320. **Service Upon Garnishee.** Upon receiving information from the plaintiff, or his agent or attorney, that any person has in his possession, or under his control, any credits or other personal property belonging to the defendant, or is owing any debt to the defendant, the officer to whom the writ is directed and delivered shall serve upon such person a copy of the writ, and a notice that such credits, or other property or debts, as the case may be, are attached in pursuance of such writ. (R. S. 1887, 3546; R. S. 1899, 4457.)

5321. **Liability of Garnishee.** All persons having in their possession or under their control any credits or other personal property belonging to the defendant, or owing any debts to the defendant at the time of service upon them of a copy of the writ and notice, as provided in the last two sections, shall, unless such property is delivered up or transferred, or such debts be paid to the officer to whom the writ is directed and delivered, be liable to the plaintiff for the amount of such credits, property or debts, until the attachment be discharged or any judgment recovered by him be satisfied. (R. S. 1887, 3547; R. S. 1899, 4458.)

5322. **Examination of Garnishee and Defendant.** Any person owing debts to the defendant, or having in his possession or under his control any credits or other personal property belonging to the defendant, may be required to attend before the justice and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of giving information respecting his property, and may be examined on oath. The justice may, after such examination, order personal property, capable of manual delivery, to be delivered to the officer having the writ on such terms as may be just, having reference to any liens thereon, or claims against the same, and a memorandum to be given of all other personal property, containing the amount and description thereof. (R. S. 1887, 3548; R. S. 1899, 4459.)

5323. **Inventory and Appraisal.** The officer having the writ shall make a full inventory of the property attached, the value thereof to be ascertained by the oath of two disinterested property holders, and return the same with the writ. To enable him to make such returns as to debts and credits attached, he shall request, at the time of service, the party owing the debt or having the credit, to give him a memorandum, stating the amount and description of each, and if such memorandum be refused, he shall return the fact of refusal with the writ. The party refusing to give the memorandum may be required to pay the costs of any proceedings taken for the purpose of obtaining information respecting the amount and description of such debt or credit; provided said constable shall not be required to appoint said values where but one article of property is attached, nor where the property attached is palpably and notoriously of less value than the amount claimed, nor when it shall consist of the debts and credits referred to in this action. And fifty cents shall be allowed for each value, to be taxed on costs in the case. (R. S. 1887, 3549; R. S. 1899, 4460.)

5324. **Sale of Perishable Property—Collection From Garnishee.** If any of the property attached be perishable, the officer, under an order therefor made by the justice, shall sell the same in the manner in which such property is sold on execution. The proceeds and other property attached by him shall be retained by him to answer any judgment that may be recovered previous to the issuing of the attachment; debts and credits attached may be collected by him if the same can be done without suit. The officer's receipt shall be sufficient discharge for the amount paid. (R. S. 1887, 3550; R. S. 1899, 4461.)

5325. **Proceedings When Property Claimed by Third Party.** If any personal property attached be claimed by a third person as his property, the officer, after receiving a written notice to that effect, shall deliver the notice to a justice of the peace, and on three days' notice to the party in whose favor the execution was issued, the trial of right of property may be had, as in other cases; provided, that the officer may refuse to retain possession of property claimed by a third person, unless the party in whose favor the execution issued shall indemnify the officer for holding the same. (R. S. 1887, 3551; R. S. 1899, 4462.)

5326. **Satisfaction of Judgment Out of Attached Property.** If judgment be recovered by the plaintiff, the officer shall satisfy the same out of the property attached by him, which has not been delivered to the defendant, or a claimant, as herein provided, or subjected to execution on another judgment recovered previous to the issuing of the attachment, if it be sufficient for that purpose.

1. By paying the whole or his pro rata share to the plaintiff, the proceeds of all sales of perishable property sold by him, or of any debts

or credits collected by him or so much as shall be necessary to satisfy the judgment.

2. If any balance remain due, and an execution shall have been issued on the judgment, he shall sell under execution so much of the personal property as may be necessary to satisfy the balance, if enough for the purpose remain in his hands. Notice of the sale shall be given and the sales conducted as in other sales on execution. (R. S. 1887, 3552; R. S. 1899, 4463.)

5327. **Collection of Balance—Return of Surplus.** If, after selling all the property attached by him remaining in his hands, and applying the proceeds, together with the proceeds of any debts or credits collected by him, deducting the fees to the payment of the judgment, any balance shall remain due, the officer shall proceed to collect such balance as upon execution in other cases. Whenever the judgment or judgments shall have been paid, the officer, upon reasonable demand, shall deliver over to the defendant the attached property remaining in his hands, and any proceeds of the property attached unapplied on the judgment. (R. S. 1887, 3553; R. S. 1899, 4464.)

5328. **When Plaintiff May Prosecute Undertaking.** If the execution shall be returned unsatisfied in whole or in part, the plaintiff may prosecute any undertaking given pursuant to the provisions of this chapter, or he may proceed as in other cases upon the return of the execution. (R. S. 1887, 3554; R. S. 1899, 4465.)

5329. **Return of Property on Judgment for Defendant.** If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, and money collected by the officer, and all the property attached, remaining in the officer's hands, shall be discharged and the property released therefrom, with costs to be taxed to the plaintiff. (R. S. 1887, 3555; R. S. 1899, 4466.)

5330. **Undertaking to Discharge Attachment.** Whenever the defendant's property shall be attached, he may, upon reasonable notice to the plaintiff, apply to the justice for an order to discharge the attachment, wholly, or on part, upon the execution and filing of the undertaking mentioned in the next section. Such order may be granted directing the release from the operation of the attachment upon the filing of such undertaking and the justification of the attachment upon the filing of such undertaking, as the case may be. All the proceeds of sales and moneys collected by the officer, and all the property attached, remaining in his hands, so released, shall be delivered or paid to the defendant upon the filing of such undertaking and making such justification, if required by the plaintiff. (R. S. 1887, 3556; R. S. 1899, 4467.)

5331. **Condition of Undertaking—Motion to Discharge Attachment.** On granting such order the justice shall require an undertaking on behalf of the defendant, with at least one surety resident and freeholder, which shall be filed, to the effect in case the value of the property, or the amount of money, debts or credits sought to be released shall equal or exceed the amount claimed by the plaintiff, in the complaint that the defendant will pay to the plaintiff the amount of the judgment which may be recovered in favor of the plaintiff in the action, not exceeding the sum specified in the undertaking, which shall be at least double the amount so claimed by the plaintiff, or to the effect, in case the value of the property, or the amount of money, debts or credits sought to be

released shall be less than the amount so claimed by the plaintiff, that the defendant will pay the amount of such judgment, to the extent of the value of the property, or the amount of money or debts or credits sought to be released, not exceeding the sum specified in the undertaking, which shall be at least double the value of such property, money, debts or credits. The value of the property sought to be released, if disputed, shall be determined by the justice upon proof in a summary manner. The defendant may also, any time before the return day of the writ or upon that or an adjourned day, apply, upon reasonable notice to the plaintiff, to the justice before whom the action is brought, for the discharge of the attachment, on the ground that the writ was improperly issued, and for that purpose may traverse the affidavit upon which the attachment issued. (R. S. 1887, 3557; R. S. 1899, 4463.)

**§332. Evidence on Motion to Discharge.** If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavit, or other evidence, in addition to those on which the writ of attachment was issued. (R. S. 1887, 3558; R. S. 1899, 4469.)

*Collins v. Stanley*, 15 Wyo. 282, 88 Pac. 620.

**§333. Discharge of Writ.** If, upon such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged, but the case shall proceed to trial and judgment proceed as in cases commenced by summons. (R. S. 1887, 3559; R. S. 1899, 4470.)

**§334. Return of Officer.** The officer shall return the writ of attachment with the summons, with a certificate of his proceedings endorsed thereon or attached thereto. (R. S. 1887, 3560; R. S. 1899, 4471.)

**§335. Answer of Garnishee.** The garnishee shall appear before the justice in accordance with the command of the summons, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant, in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant, and in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice. (R. S. 1887, 3561; R. S. 1899, 4472.)

**§336. Garnishee May Pay Over Money—Costs.** A garnishee may pay the money owing to the defendant by him to the officer having the writ of attachment or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of his claim against him, and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs. (R. S. 1887, 3562; R. S. 1899, 4473.)

**§337. Failure to Appear—Contempt.** If the garnishee does not appear and answer, the justice may proceed against him by attachment, as for a contempt. (R. S. 1887, 3563; R. S. 1899, 4474.)

**§538. Attachments—Release of in Justice Courts.** In all suits in the justice of the peace courts in this State, where wages have been garnished during the pendency of such suits, and in which judgment shall have been rendered, and in which suits a good and sufficient bond for the payment of costs and to abide by the judgment in the District Court, shall have been furnished after such judgment, and in which such bond shall have been approved by the justice of the peace, the said justice of the peace shall immediately order, in all of such cases, the release of such wages garnished, and at such time shall notify all parties concerned. (L. 1903, ch. 101.)

**§539. Court May Order Garnishee to Pay Over Money.** If the garnishee appear and answer, and it is discovered on his examination that, at the service of the writ of attachment and notice upon him he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court. (R. S. 1887, 3564; R. S. 1899, 4475.)

**§540. Action by Plaintiff Against Garnishee.** If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into court, the plaintiff may proceed against him in an action in his own name, as in other cases, and thereupon such proceedings may be had as in for the amount of the property, and the credits of every kind of the defendant in the possession of the garnishee, and for what shall appear against the garnishee. If the plaintiff proceed against the garnishee, by action, for the cause that his disclosure was unsatisfactory, unless it shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. (R. S. 1887, 3565; R. S. 1899, 4476.)

**§541. Final Judgment Against Garnishee.** Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined, and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be charged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all properties, from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property. (R. S. 1887, 3566; R. S. 1899, 4477.)

**§542. Attachment Writ and Summons.** If the writ of attachment shall be issued at the commencement of the suit, it shall contain the substance of a summons, and no separate summons shall be necessary. If said writ at the same time of the summons, the said writ shall be made returnable the justice shall be the same as in other cases commenced by summons. (R. S. 1887, 3567; R. S. 1899, 4478.)

*Cheeseman v. Fenton*, 13 Wyo. 451, 80 Pac. 823.

**§543. Probate Payment of Different Attachments.** When several attachments are issued by the same justice, executed upon the same property, or the same persons are made garnishees at any time before a judgment of money attached shall be deemed to belong to all attaching creditors, and the proceeds, if not enough to pay all, shall be divided, after the amount of the claim of each, in court. (R. S. 1887, 3568; R. S. 1899, 4479.)

**§544. Officer First Attaching to Have Custody.** The officer first attaching shall be the custodian of the property attached or garnished and paid over to him, and shall sell the property attached upon the various executions, or upon the order of the justice, and shall make return of his doings to the justice, and he shall pay over the proceeds pro rata, as herein provided. (R. S. 1887, 3569; R. S. 1899, 4480.)

**§545. Notice of Attachment by Publication.** When the defendant cannot be summoned, and his property or effects shall be attached, and if

he do not appear to the action at the return of the writ, the justice shall enter an order in his docket, requiring the plaintiff to give notice to the defendant, by publishing in a newspaper, if there be one printed in the county, or by three written or printed advertisements, posted up at three of the most public places in the county, that a writ has been issued against him, and his property attached to satisfy the demand of the plaintiff; and that unless he appear before the justice at some time and place, to be mentioned in said notice, not less than twenty, nor more than sixty, days from the date thereof, judgment will be rendered against him, and his property sold or appropriated to pay the same. (L. 1871, p. 58, 154; R. S. 1887, 3570; R. S. 1899, 4481.)

Cheeseman v. Fenton, 13 Wyo. 451, 80 Pac. 823.

546. **Form of Notice.** The notice may be in the following form:  
State of Wyoming,) ss.  
..... County.)

To.....: You are hereby notified that a writ of attachment has been issued against you, and your property attached, to secure the demand of....., amounting to..... Now, unless you shall appear before J. P., a justice of the peace in and for the said county, at his office, on the..... day of....., A. D.,....., at..... o'clock, in the..... noon, judgment will be rendered against you, and your property sold or appropriated for the debt.

Dated this..... day of....., A. D.,....., Plaintiff.

(R. S. 1887, 3571; R. S. 1899, 4482.)

547. **Time and Proof of Publication.** Such notice shall be posted up, or published at least twenty days before the expiration of the time at which the party is required to appear, and the posting up may be proved, either by the return of the officer upon a copy of the notice, or by the affidavit of any person who would be a competent witness in the case. (R. S. 1887, 3572; R. S. 1899, 4483.)

548. **Proceedings Upon Judgment by Default.** When the defendant shall be notified as aforesaid, and shall not appear and answer to the action, his default shall be entered by the justice in his docket, and the plaintiff may proceed thereon to final judgment as in actions commenced by summons, but no execution shall be issued on such judgment, either against the defendant, or money paid to the justice thereon, until the plaintiff, or some person in his behalf, shall execute a bond in double the amount of such judgment to the defendant, with security to be approved by the justice, conditioned that if the defendant shall, within one year from the rendition of such judgment, appear and disprove the debt or damages adjudged against him, or any part thereof, the plaintiff will refund the whole, or such part thereof as may be found not justly due him in a review of the case. (R. S. 1887, 3573; R. S. 1899, 4484.)

Cheeseman v. Fenton, 13 Wyo. 446, 80 Pac. 823.

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Thornton

Brief on the law of garnishment

*R. B. Blackman* 11 1923

**END OF  
TITLE**